UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 21-30589(MBK)
	.	Chapter 11
LTL MANAGEMENT LLC,	.	
	.	Clarkson S. Fisher U.S.
Debtor.	.	Courthouse
	.	402 East State Street
	.	Trenton, NJ 08608
	.	
	.	Tuesday, March 8, 2022
. . . . .	.	10:00 a.m.

TRANSCRIPT OF MOTION AND APPLICATION
FOR RETENTION HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Jones Day By: GREGORY M. GORDON, ESQ. DANIEL B. PRIETO, ESQ. 2727 North Harwood Street, Suite 500 Dallas, TX 75201 Otterbourg P.C. By: MELANIE L. CYGANOWSKI, ESQ. ADAM C. SILVERSTEIN, ESQ. 230 Park Avenue New York, NY 10169-0075
For the Official Committee of Talc Claimants 2:	Cooley LLP By: CULLEN DRESCHER SPECKHART, ESQ. 1299 Pennsylvania Avenue, NW, Ste 700 Washington, DC 20004-2400
Audio Operator:	Luz Di Dolci

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjCourt@jjCourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd):

For the Official Committee of Talc Claimants 2:	Sherman Silverstein By: ARTHUR ABRAMOWITZ, ESQ. East Gate Corporate Center 308 Harper Drive, Suite 200 Moorestown, NJ 08057
For the Official Committee of Talc Claimants 1:	Brown Rudnik, LLP By: JEFF JONAS, ESQ. DAVID J. MOLTON, ESQ. 7 Times Square New York, NY 10036 Genova Burns, LLC BY: DANIEL M. STOLZ, ESQ. 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Bailey & Glasser, LLP By: BRIAN GLASSER, ESQ. 105 Thomas Jefferson Street NW Suite 540 Washington, DC 20007
For Johnson & Johnson:	White & Case LLP By: JESSICA LAURIA, ESQ. 1221 Avenue of the America New York, NY 10020
For the U.S. Trustee:	U.S. Department of Justice By: LINDA RICHENDERFER, ESQ. One Newark Center, Suite 2100 Newark, NJ 07102 Office of the U.S. Trustee By: JEFFREY M. SPONDER, ESQ. One Newark Center Newark, NJ 07102
For Arnold & Itkin, LLP:	Pachulski Stang Ziehl Young & Jones, PC By: LAURA DAVIS JONES, ESQ. 919 Market Street 16th Floor, PO Box 8705 Wilmington, DE 19899

APPEARANCES (Cont'd):

For DeSanto Canadian Class Action Plaintiffs:	Lite DePalma Greenberg & Afanador, LLC By: ALLEN JOSEPH UNDERWOOD, II, ESQ. 570 Broad Street, Suite 1201 Newark, NJ 07102
For Aylstock, Witkin, Kreiss & Overholtz, PLLC:	Klee, Tuchin, Bogdanoff & Stern, LLP By: ROBERT J. PFISTER, ESQ. 1801 Century Park East, 26th Floor Los Angeles, CA 90067

* * * * *

THE COURT: Allow me a couple of moments.

All right. We're ready, Bruce, and loose.

THE CLERK: Yeah.

THE COURT: Off the privacy.

Okay, good morning, again. This is Judge Kaplan. We have a filled courtroom, but for those who are appearing through Court Solutions, as a reminder, please remain on mute. But if you wish to be heard, please make use of the raise hand function so that I can call on you.

And welcome, again, everyone.

We have several matters on the agenda for today. I want to start off on a personal note. It's been brought to my attention that a tongue-in-cheek reference that I made in my opinion on the preliminary injunction regarding my infamous retirement clock, this is it, that it has been viewed, and I think understandably, as insensitive or hurtful for the plaintiffs, the poor claimants in these cases, who obviously live day to day by clocks and calendars. Clearly, that wasn't even within the realm of my thinking when making the comment. It was to simply reinforce the Court's intention to let the parties know that the Court's going to be on top of things, so to speak, managing, or at least oversight, because I had indicated that I would be carrying the preliminary injunction for a few months and I didn't want the parties to think that they could just, I think I used the phrase, "slow-walk the

case."

But it certainly meant -- I meant no disrespect. And I understand how it could -- certainly, how it came off. And so I wanted to give my apologies to the plaintiffs and anyone who might've found it hurtful and insensitive. As my wife will explain, often enough, my lack of sensitivity is well-known at times. But it certainly wasn't intended.

Now, moving to today's agenda. We have a number of matters on, administrative and substantive. I wanted to at least do what I hoped would be the easy tasks first. I wanted to talk about future omnibus dates so we have an idea of calendaring. April is tight. I am scheduled for some vacation and speaking at some seminars. After March 30th, which is our next omnibus date, and my expectations for the omnibus dates are that they will be in-person. Dates in between can be matters that are brought on shortened time. Emergent matters certainly could be handled by Court Solutions, so as to try to reduce the time and expense for you all.

And even for the omnibus dates, certainly appearances, we are streaming through Zoom, but for those who want to be heard and argue, you're always welcome to participate through Court Solutions. The next date I have is Tuesday, April 12th. That would be the only April date. Then, Wednesday, May 4th; Tuesday, May 24th; and June, I believe June 14th. That certainly takes us out of the -- let me just

check on that June 14th date.

I obviously understand that there are other cases that you all have in other jurisdictions, some small matter going on in Delaware for the Boy Scouts and all is going to take a few weeks. So if these dates conflict, let me know, we'll work on other dates. But I'm also trying to fit them into my schedule as well.

Yep, June 14th. All right.

Let's turn to, if we may, the appointment of an FCR. There's been a flurry of correspondence from the two Committees and the debtor. If my understanding is correct, the TCC1 and the debtor, actually and TCC2 have agreed on the appointment of Randi Ellis as an FCR. So my first question would be, and I know there's a request on behalf of TCC2 for a separate appointment of an additional FCR. But my first inquiry would be, is there a need to delay that appointment of Ms. Ellis?

In other words, there was, I think in my initial protocol it was to March 30th, but there seems to be a consensus, and I want to grab whatever consensus I can. If there's a consensus on that individual, why not go forward and have that one brought onboard.

Mr. Gordon?

MR. GORDON: Your Honor, Greg Gordon, on behalf of the debtor.

We see no reason to delay the appointment. We

understand that both Committees support Ms. Ellis as the FTCR and we think that appointment should be made as soon as possible.

THE COURT: Mr. Molton, good morning.

MR. MOLTON: Good morning, Judge. David Molton at Brown Rudnick for Committee 1. We join Mr. Gordon and I presume Ms. Speckhart of Committee 2. I just want to note something that's important for the record, Your Honor.

THE COURT: Yes.

MR. MOLTON: Ms. Ellis, if appointed, will be the first woman Future Claims Representative in the entire history of Future Claims Representatives in the United States, and we think it appropriate that it happened in this case. And I think it's important for Your Honor to know that.

THE COURT: No, I appreciate that. I didn't realize that. And I think that makes it worth a valid selection.

Ms. Speckhart. Good morning.

MS. SPECKHART: Good morning, Your Honor. Cullen Speckhart of Cooley appearing on behalf of TCC2.

Your Honor, we did file a letter indicating that we support Ms. Ellis's appointment. And we are certainly pleased that there would be a female in the mix if that were to occur. We also expressed our receptivity to the appointment of Mr. Green. I believe that was the Court's selection for an FCR.

And just to step back, we have asked for a separate FCR, largely in recognition that J&J's approach to resolving mesothelioma cases is markedly different from its approach to ovarian cancer claimants, and we want to ensure that the representatives of the future claims for mesothelioma are able to negotiate with the debtors in a way that is free of conflict, free of restraints, and directed to pursuing a result that is consistent with the reality of how mesothelioma claims are different.

And, by way of example, J&J has pursued a materially distinct litigation strategy with respect to mesothelioma claimants that has resulted in settlements that are more robust and comparatively higher. There is no dispute that asbestos causes mesothelioma. The settlement ranges that the debtors have demonstrated are markedly higher, and we included those figures in our correspondence to the Court that in no way reflects our ideas about the relative value of the claims. It is just reflecting the debtor's historical approach and the debtor's behavior with respect to those claims.

And let's not forget about the people, Your Honor. The survival rates for mesothelioma are much lower. The disease state is different. And in light of the multitude of differences, we believe that it would be much easier, more fluid, more efficient if the future mesothelioma claims and the future ovarian cancer claims are independently represented to

achieve fully consensual plan results.

And so that is the basis for our request for a separate FCR. And, again, we would support Ms. Ellis and Mr. Green for either of those positions.

THE COURT: All right. Thank you.

Then finishing with Ms. Ellis, I see no reason not to have her appointed. And I want to discuss the possibility of a second FCR, FTCR I think we're using an extra letter. I also received from Ms. Jones correspondence this morning, I believe, taking issue with the timing of an appointment of the FTCR, for a second FTCR. So I'm going to turn to Ms. Jones for a moment. But I will ask debtor's counsel to submit a form of order appointing Ms. Ellis. We might as well get that onboard and started.

MR. GORDON: We will do that, Your Honor, and we'll share that with the other side before we submit it to the Court.

THE COURT: Thank you.

Ms. Jones.

MS. JONES: Thank you, Your Honor. Laura Davis Jones, Pachulski Stang Ziehl and Jones, on behalf of Arnold and Itkin.

Your Honor, we did see a letter filed by Ms. Speckhart about 4:45 yesterday afternoon where she requests a separate FTCR for TCC2, or for the meso claimants. Your

Honor, our concern was it was very, it's very last minute, it's less than, you know, 18 hours ago, and we need time to talk with our client about it. And also I think it's artificially way too soon. I understand that the TCC ceases to exist tomorrow, and that was probably the last minute request. But, frankly, Your Honor, this is an emergency of their making. This is, you know, the idea of there being two Committees or one Committee is several months ago, and they've had at least six weeks to bring this issue before the Court and for it now to be a crisis, Your Honor, just seems a little, or is a bit problematic.

So we'd ask Your Honor, as I detailed in the letter, that you give Ms. Speckhart her day in Court, but we not do it today. That we give the parties a chance to review the request, that we respond, and, Your Honor, I apologize, I don't have the dates right in front of me that I suggested. But basically asking for us to have at least a week to get back to the Court on our thoughts and have it taken up at the hearing on the 30th, which was the date that Your Honor had set for selecting the final FTCR, in any event.

Now, I do understand that the parties, we have not been in this loop, but that the debtor has now agreed with the Committees on their FTCR. I just heard that one minute ago. In fact, Your Honor, my request still remains that we be given an opportunity to evaluate this, frankly, new motion that's

been done by letter, a substantively release having to FTCRs in a case, I think it is unheard of. I don't think it's -- I don't recall any mass tort case that I've been involved in where there's been two. But in any event, Your Honor, not to want to argue the substance, but rather to give us an opportunity for notice and a hearing or at least notice and a chance to respond by letter after we talk to our client.

THE COURT: All right. Thank you, Ms. Jones.

Ms. Cyganowski.

MS. CYGANOWSKI: Thank you, Your Honor. Melanie Cyganowski, Otterbourg co-counsel to TCC1.

TCC1, as the Court is aware, has worked diligently in connection with following the protocols set out in the original January order. We've worked closely with TCC2 and then with the debtor in these latter days.

Having said that, I assume, unless the Court does otherwise today, as of Wednesday, we're going to be back to TCC0, TCC Original, TCC whatever we're going to call it. And at that point, it would absolutely be appropriate for that Committee to consider the request and take it under consideration.

THE COURT: All right. Thank you, Ms. Cyganowski.

Good morning.

MR. PFISTER: Good morning, Your Honor. Rob Pfister from the Klee Tuchin firm on behalf of Aylstock Witkin.

I join both prior comments of Ms. Jones and Ms. Cyganowski. I do think this is a very important issue. I think the Court would benefit from hearing the views of the parties -- the considered views of the parties on this issue.

Thank you.

THE COURT: All right. Thank you.

Mr. Gordon.

MR. GORDON: Your Honor, Greg Gordon on behalf of the debtor.

Our perspective is somewhat different. We would ask the Court simply to deny this today. We don't think there's any reason to consider this any further. This in our mind is basically a very late effort by TCC2 to relitigate the U.S. Trustee's motion with respect to the two committees, raising the same types of issues. There is no precedent for two FCRs like this in a mass tort case. I think there's been a handful of cases where there's been more than one FCR, but I think in those cases, those were different products. We're not aware, at least, of any case where there's been multiple FCRs for just because a disease is different emanating from the same product. So we don't see a basis for that.

The other thing I would say, Your Honor, this issue actually came up, I believe, in a hearing back in December where I kind of forecasted for the Court the potential that if we go down the road with two committees, then we're going to be

probably talking about two FCRs. And I think Your Honor responded at that time that you had in mind one FCR. And I think the protocol we've been operating under the last several weeks or months contemplates one FCR.

And this is basically, in our view, a late filed attempt to reconsider Your Honor's order on the whole FCR process. Are we now to go back and basically throw out the protocol and come up with a different protocol where, you know, maybe we don't have three proposals, maybe we each make five and we have three strikes, or something like that? It just seems to us it's too late. It's basically the same issues you've heard before. There's just no precedent for having these multiple representatives for different disease types.

And, you know, the idea that we would now have a further briefing and another hearing, which I guess effectively would extend TCC2 out for several more weeks just because they wait until the very last minute, that just seems inappropriate to us. And we would just ask that you deny that request today.

THE COURT: All right. Thank you, Mr. Gordon.

Anyone else wish to be heard?

(No audible response)

THE COURT: Okay. Let's also address the future of TCC2 because it's a bit intertwined. And my understanding is that a motion was filed last night or sometime yesterday to extend the existence of TCC2 for the limited purpose, as well,

of filing an appeal. I know there have been appeals that have been filed. I believe TCC2 filed a notice of appeal. I believe the Aylstock firm filed a notice of appeal. I just couldn't keep up. So I'm not sure who else has filed notices of appeal.

But I believe there was a motion that was filed, returnable on the 30th. There are motions seeking certifications of the circuit, but there's also a motion to extend the TCC2 existence for the limited purpose of conducting the appeal, and that's returnable on the 30th.

The Court's inclination, may come as a surprise, is to wrap these issues together. While I haven't endorsed or considered the appointment of a separate committee, I haven't -- a separate FCR, I haven't ruled it out. And I think it's important to at least hear the parties substantively as to the merits of a second FCR, really to protect the interest of the mesothelioma claimants.

I understand TCC2 wishes to pursue an appeal of the Court's decisions. They, in their papers, I think I glanced at them, they raised issues. They advocate that there were issues raised during the trial which were separate and apart from those that were pursued by TCC1. In order to give all the parties a sufficient time, and let me make clear, not to open up the door for extensive additional briefings, hearings, and discovery, my inclination is to schedule a hearing on the

appointment of a second FCR for the 30th, itself. Not to have a -- I believe Ms. Jones had requested an opportunity and maybe a hearing in advance of that.

I would ask that the parties, of course, meet and confer. It would involve TCC2 and the debtor at this point, probably. Well, actually, I shouldn't be presumptuous, maybe TCC1 taking part. I do not intend to go through a duplicate protocol of three names and three names and strikes. I would, if the Court is going to appoint a second FTCR, which isn't by any means definite, I would ask that each constituency, TCC1, TCC2, and the debtor be prepared to provide a single name, and the Court will have its own name. And it will be short with. I'm not allowing discovery. I'm not going through strikes or any of the other chess game that you've all been doing for the last three weeks.

But in order to handle that, I think TCC2 will be somewhat handcuffed if they are not in existence, leaving it to the claimants, the individual claimants comprising -- or committee members to take up the oar. So I am prepared to extend TCC2 -- irony of all ironies -- to April 12th, well, to April 11th. Our next hearing -- well, we'll call it the close of April 12th. That's the first date. In other words, so that'll all can argue on the 30th and then on April 12th, it will be disbanded. That will also allow for an argument on the motion that's pending to allow it to exist for purposes of the

appeal, so.

And I need to hear from the parties on that. So it's it'll be disbanded or maybe it'll be disbanded in part or for a limited purpose remaining, I don't know. But that gives sufficient time to at least address, and again, let me emphasize, I'm not looking to open the door for TCC2 to undertake a lot of work in the next 30 days to make up for ground, just to allow these issues to be resolved.

Anybody have any concerns or issues?

MR. MOLTON: Your Honor, David Molton, again, of Brown Rudnick, for TCC1. No issues or concerns regarding any of that, but just in light of Your Honor's direction, which we appreciate because one of the things coming in here with the motion to have TCC2 extend for the limited purpose of prosecuting the appeal put us in a very interesting position regarding the notice of appeal that we might have to file, either as TCC1 or tomorrow, what was going to be tomorrow as TCC original.

So we came here. One of the things you didn't see, Your Honor, on the docket, was any activity by TCC1 --

THE COURT: Correct.

MR. MOLTON: -- regarding the appeal, and it was for that very reason. Needless to say, I'm very sensitive and cautious when it comes to notices of appeal because they are jurisdictional and many lawyers know what happens if you get

something wrong. So your direction is really appreciated, Your Honor.

One of the things I can tell you now, is that TCC1, therefore, as TCC1, will be filing a notice of appeal from both the preliminary injunction order as well as Your Honor's motion to dismiss order. We will also be filing certification up petition for direct review to the Third Circuit. And that will probably be done within the next day or 24 hours.

One of the questions I have regarding the certification issue, Your Honor, because I think it's important for now both committees and for all of our constituents out there who participated either by zoom, by listening, or in person here a couple of weeks ago during our trial, is, you know, how Your Honor wants to hear that or structure that. Per Bankruptcy Rule 8006, Your Honor, the bankruptcy court only retains jurisdictions for 30 days from the first NOA, notice of appeal, or we think taking from Ms. Speckhart's notice filing yesterday, until April 6th. And we assume that, therefore, the Court will want to address the now two petitions, will be two petitions, for direct appeal certification.

The question is, how you want to do that because Rule 8006(f)(4), we can't request oral argument. And we're not entitled to oral argument unless Your Honor delivers it to us. So one of the things, Your Honor, I know Ms. Speckhart filed the motion returnable for the 30th. We will try to get it on

in time for that. We may have to do short notice, but it will be only losing a day or so. So I hope I don't get any issues on that.

But I just wanted to let you know, you know, that, you know, that will be the case as well. And somebody gives me an important note here. And, Your Honor, pursuant to Your Honor's order from January 26, that the original TCC be reinstated as of March 9th. Your Honor, today, directed that TCC2 continue its existence. Without a likewise order from your Court regarding TCC1, we go out of existence at one second past 12 midnight tonight.

So, in any event --

THE COURT: I can wipe them all out.

MR. MOLTON: You'll take us all out.

In any event, if Your Honor is going to do that, we think a parallel, you know, order extending TCC1 until that time and then having the reconstitution happened on the date Your Honor suggested would be fine.

THE COURT: All right. For clarity, I'm prepared to issue a bench order extending the existence of both TCC1 and TCC2 through and including April 12th.

MR. MOLTON: Thank you, Judge.

And I do want to -- I don't know if I'm going to get a chance today. Mr. Jonas, of course, is going to take the rostrum soon. But to extend our thanks for your comments at

the very beginning of today's Court session. I think Your Honor was right to note, you know, the sensitivities within our constituency. And I know it's going to be a meaningful statement, you know, what you said first thing this morning to all of our constituents, whether they be ovarian cancer claimants or mesothelioma claimants.

And lastly, Your Honor, thank you for reminding Ms. Lauria and myself that we have to spend the next three weeks on Zoom in front of Judge Silvers.

THE COURT: Good luck with that.

MR. MOLTON: Thank you.

(Laughter)

THE COURT: I do want to address the issues on the petitions for direct appeal. But Mr. Gordon, did you want to be heard?

MR. GORDON: Thank you, Your Honor. Greg Gordon again.

Obviously, I heard well Your Honor's ruling and respect it. I do have a concern, and I'm just going to state it for the record, which is, you know, the longer we have a period in time where these two committees continue, it's almost going to become like a fait accompli, I think, with respect to the appeal because the next argument you're going to hear is that, but we already filed notices of appeal. We've already started the certification process and the like. And that to us

is just unfortunate because we thought your order was very clear that absent something happening prior to March 9th, things would revert back to where they are. So again, totally understand what you said, respect it, but it just seems to me we're headed into a direction that's going to make this perhaps even more complicated and difficult to address the longer it goes.

And then, just one clarification with respect to TCC2, we assume that it's continuing in effect for just the purpose of addressing these two issues that Your Honor was talking about. At least that was my understanding. I just wanted to clarify that.

THE COURT: That is my understanding.

MR. GORDON: Okay. Thank you, Your Honor. And I think Mr. Molton asked the question that we were going to ask, which is what happens with TCC1, because that's the other anomaly of this that TCC2 was asking for relief that has an impact on TCC1 and it wasn't asking for the same relief, and obviously, that issue has now been addressed.

THE COURT: All right. Thank you.

MR. GORDON: Thank you.

THE COURT: No, that's fine.

And the court is cognizant of the length of time TCC2 continues in spurts has an impact, and it hasn't been my intention to keep it going unless the facts and law warrant it.

Ms. Speckhart?

MS. SPECKHART: Yes, Your Honor. Thank you. Cullen Speckhart, again.

Just on that broader topic, on the topic of TCC2's continued existence in the case and our potential role in the case between now and April 8th, I do want to just clarify. We filed a motion yesterday acknowledging the substance and the import of Your Honor's original dissolution order, which mandated that TCC0 be reinstated pursuant to Judge Whitley's order in North Carolina. And we set the motion seeking our continued existence for limited purposes of the appeal for March 30th. I believe that objections are due on the 23rd.

And that does raise some issues that are timely and topical for today, some of which Mr. Gordon and Mr. Molton have referenced. And just parenthetically, I'll note, because I think I have too, that these are absolutely unusual circumstances and we've all been faced with an incredibly novel and difficult set of facts and case dynamics. And we were, frankly, very surprised and disappointed in the U.S. Trustee's decision not to file the appropriate pleadings to present a showing that Your Honor asked for on the topic of two committees.

We did believe, then, at the time that the Committees were split, and we continue to believe that, a two-committee structure is the best result for the case. We think that it is

one that will allow us to deal most expeditiously and minimizes the probabilities for independent objections later on if there's an estimation proceeding and a plan proceeding. And it will allow negotiations among the estate parties, the estate fiduciaries, to proceed on parallel paths. And, again, this is a broader point than just the limited existence for purposes of the appeal.

But the question for today is, what is right for the case? And we read your opinion on the motion to dismiss, and we understand the mantra. If this case is going to continue for the purpose of achieving an equitable and efficient resolution to the talc related claims, then, in our view, let's get to the result through mediation or otherwise. Let's negotiate in parallel paths. Let's have negotiations with the debtors on a parallel track between OCs and the debtors and mesothelioma, separately. The debtors have demonstrated that they can walk and chew gum at the same time.

So the question for us is, how can we help the case over the next period of time to April 12th, or whenever the next date is? If that's in a mediation context, or it isn't, we would like to assist the Court's vision for this case and be a force for good in the meantime.

THE COURT: Thank you. I appreciate your comments. I think they go a long way.

The request of the Court that I've seen in

correspondence was with the appeal and the request that has been raised has been with the FTCR, so that's why I limited to extend the courtesies.

MS. SPECKHART: Yes, sir.

THE COURT: I don't believe anything the Court can do stops parties from talking, whether they are talking under the purview of TCC2 or individual claimants. So as we proceed through April 12th, I appreciate the intent to try to engage the debtor and TCC1, and I don't think the Court is placing any impediments in that way.

Parties and lawyers can speak and agree and move forward without any formality. And we'll address the specific formalities of the existence of these Committees by April 12th. So I thank you.

MS. SPECKHART: Thank you, Your Honor.

THE COURT: Counsel?

MR. GLASSER: Were you calling on me, Your Honor.

THE COURT: Oh, I'm sorry. Mr. Glasser, I'll get to you in a moment. I have Counsel in front of me. Thank you.

MS. RICHENDERFER: Good morning, Your Honor. Linda Richenderfer from the Office of the United States Trustee. Mr. Sponder and I have been sitting over there hearing all of this and waiting for the appropriate time to speak up.

Your Honor, one of our concerns is we don't want to disenfranchise any of the claimants here. And a concern is

that if TCC1 continues to exist and TCC2 only exists for limited purposes, then we may possibly run into a scenario where things will come up, parties will need to respond, Committees will need to take positions, and the mesothelioma claimants will not have a say if they are limited between now and April 12th to only addressing the FCR issue, the appeal issue, and I guess I just heard something about mediation.

And so that is our concern that in acknowledgment of Your Honor's order, that there should be one Committee, but you allow them to exist until such a date. I think that Your Honor's original ruling today was to extend that order, extend the date from March 9th to April 12th, which would allow them to exist for all purposes until April 12th. And then I heard it pulled back a bit after Mr. Gordon's comments. So I guess, in part, I'm seeking some sort of clarification, because again, the U.S. Trustee's interest is to make sure that all claimants have a voice in this and to make sure that the mesothelioma claimants are not taken out of having their positions represented for the next month.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Mr. Glasser, you wish to be heard?

MR. GLASSER: (No audible response)

THE COURT: Mr. Glasser?

MR. GLASSER: (Indiscernible) I had a different issue

raised than the U.S. Trustee just did, so if you want to finish on that and then come back to me, that'd be fine.

THE COURT: All right.

Well, let me hear your issue and I'll come back and address all of it.

(Laughter)

MR. GLASSER: Yeah. My issue, Your Honor, was simply that if -- that I would like your order to stay, that whatever is filed by TCC1 and TCC2 between now and April 12th will be deemed to have also been filed by TCC0 should it be constituted because the appeal time runs in mid-April and there will not have been a notice of appeal filed by TCC0 based on how we're doing this today, which is fine, if it's deemed to have been filed by them if they do come back and (indiscernible).

THE COURT: Who wants to draft that order?

(Laughter)

MR. MOLTON: Judge, we'll take a whack at it.

MS. SPECKHART: I'm not volunteering. I'm just suggesting that there's probably a way to stipulate around the appeal issues, and we'll be happy to work on that to arrive at the correct result.

THE COURT: Thank you.

MR. MOLTON: Judge, David Molton.

When the two Committees were created out of the one Committee, we actually did engage in a stipulation --

THE COURT: Right.

MS. SPECKHART: We did.

MR. MOLTON: -- that made a successor status for each of the two Committees from the movant status of the original Committee. I'm sure there's a way to deal with that, so thank you.

THE COURT: Mr. Gordon?

MR. GORDON: Your Honor, Greg Gordon on behalf of the debtor.

We don't oppose that.

THE COURT: All right.

I'm going to -- I understand Mr. Gordon, your comments initially about limiting to the appeal and the FCR, and that was my inclination. I've heard from the Of the U.S. Trustee, because I cannot, sitting here at now, envision any wayword pathway where somebody -- there's an issue out there that TCC2 has to weigh in on but they're not authorized to do so, I'm just going to make it easy. I'm going to extend the period for TCC2 through April 12th. They can hear and appear on all matters and I'll just implore you all to limit the matters.

But otherwise, it just gets too complicated and all of the sudden, we'll be here on order shortening time for authorization to appear on one limited issue. So let's just continue *in toto* TCC2.

Now it's my turn to throw out a wrinkle with respect -- you can sit down or we can address it -- and that's what the direct appeals to the Circuit because Mr. Molton, you asked for guidance.

With respect to the preliminary injunction, the decision and the order on a preliminary injunction in the adversary proceeding, there's obviously a much stronger case that it's a final judgment terminating the proceeding. The issue on the motion to dismiss is a bit more involved.

My understanding of the law in this Circuit, In re Brown, I believe, 1990 decision, almost an outlier among Circuits, to allow a denial of a motion to dismiss a Chapter 11 to be deemed a final judgment. I think Third Circuit Judge Jordan, in 2007, actually in a concurrence, challenged it, or raised the question. I forget which case. But even that decision was before the Ritzen Group and Bullock decisions by the Supreme court, which call for a separate distinct proceeding.

And I guess I'm going to find it difficult, unless this issue was resolved, and I'm not saying I've reached a decision on it, but it hasn't been briefed, how I can certify an issue to the Third Circuit that is interlocutory and not a final judgment. Maybe I can, and you know, we're all facing some new issues. But it would seem to me that maybe the better course would be to go before the district court and seek a

resolution of that issue, and then the district court can also certify it to the circuit. I'm not looking to avoid responsibility, but I'm not prepared yet to say that it's necessarily a final judgment or order.

And therefore, there's a right to appeal without authorization to pursue an interlocutory appeal. So I throw that out. And I don't know -- I'm not necessarily calling for comment, but it's something I think you all collectively have to address. I'm not prepared to address it now, Counsel. Maybe Counsel is.

(Laughter)

MR. PFISTER: Your Honor, apologies. Rob Pfister from Klee Tuchin.

We looked at this issue extensively. I only rose because I think it's clear from the statute. Our understanding is 158(a) is the jurisdiction for appeals from final judgments, 158(a)(1), the district courts of the United States have jurisdiction to hear appeals from final judgments or orders. And then (2) is from final -- or from interlocutory orders, and (3) is with leave of the Court. And under 158(d), which is the certification statute, it grants court of appeals jurisdiction to hear appeals under Subsection A and B.

So we thought it was clear that if Your Honor certified it, that it could be certified even as an interlocutory matter. And I don't know that that's your

understanding.

THE COURT: I don't know. But you all have much more brainpower at your disposal to let me know if that's the case. But I think that's an initial threshold issue that has to be addressed somewhere. And I guess we'll address that on the 30th when these motions are returnable. I just wanted to make sure everybody's cognizant of at least an issue that was gnawing at me. All right.

Then, we are set. Just to clarify, we have the two Committees in existence through the 12th. We have a hearing on the appointment of a second FTCR on the 30th. And I've also asked that you all, if that is successful, to have names ready for consideration.

Mr. Molton?

MR. MOLTON: Yeah, Your Honor. Just a clarification. David Molton for TCC1.

So we will, notwithstanding the rule that I mentioned, which of course can be modified by Your Honor's ruling, we will be having argument then on the certification issues --

THE COURT: Yes.

MR. MOLTON: -- on the 30th?

THE COURT: Yes.

MR. MOLTON: Okay. I just wanted that to be clear.

Thank you.

THE COURT: I anticipate argument.

Then, let's approach the issue of mediation. And I'm going to turn to Mr. Gordon, and I'm going to ask what the debtor's position is. I've seen there's been some discussions among Counsel. Let me, if you would apprise the Court.

MR. GORDON: Greg Gordon, again, on behalf of the debtor.

Our understanding, Your Honor, is that we had an agreement with TCC1 on a co-mediator set-up, which are Mr. Gary Russo and retired Judge Joel Schneider. And our thought was -- and others will obviously be heard on this, but if Your Honor would be inclined to approve that, we would then immediately work with the other side to work up a mediation protocol that we would then come back to the Court with and present it to Your Honor for approval. And if we can't reach an agreement on the protocol, I think we could come back and explain what the dispute is and ask Your Honor to weigh in to the extent there is a dispute.

THE COURT: All right. Thank you.

I certainly don't have issues with the selections, but let me hear from Counsel.

MS. SPECKHART: Your Honor, Cullen Speckhart, again, on behalf of TCC2. Your Honor, I regret to inform the Court that we were not consulted with respect to the identity of the mediators, perhaps for reasons that could have been obvious and

had more to do with prior expectations of the existence of TCC2.

But as I said earlier, we are very interested in participating in the process. We would like the ability to talk to our clients about the identity of the mediators and to have some meaningful discussion with the debtors and TCC1 about that, and also to participate in drafting of the protocol.

THE COURT: All right. Thank you.

Mr. Molton?

MR. MOLTON: I keep on getting my mask hooked up on my glasses, Your Honor. Another scourge of the times.

Listen, we welcome Ms. Speckhart's comments. I think they're very constructive. I think her comments earlier about going forward and seeking within a expedited period of time, to use my word, with alacrity, we can move forward to a mediated resolution of these issues is something that I know everyone and all of the 38,000 ovarian cancer claimants that we represent on TCC1 are very interested in.

We've been thinking a lot about it, and as you heard from Mr. Gordon, that resulted in the proposal of a number of mediators. You know, clearly, Your Honor there's other parties here and we welcome, you know, you know, the fact that they join in us in wanting to move this case towards a resolution.

THE COURT: Thank you, Mr. Molton.

Let me ask this, then, because I want to make

mediation and the process going forward a priority, and I think, from what I'm hearing, I think that's shared by all here. If I were to schedule a hearing telephonic by Court Solutions for a week from now to give you all a chance to develop a protocol, see if you have input, is that doable? In other words, I want to authorize the mediators to feel comfortable enough to start picking up the phone and dealing with the parties.

So you tell me what's workable understanding that there's -- ideally, it would be great to have it globally. But we have to start somewhere.

MR. MOLTON: Yeah, Judge. David Molton, again, for TCC1.

We've been thinking about a protocol, and I think we'd be able to meet and confer with the, you know, with the debtor, you know, and other interested parties, you know, including TCC2, to move that forward.

THE COURT: Mr. Gordon, is that a schedule that works or do you have other thoughts?

MR. GORDON: In my mind, Your Honor, there's two issues. One is the mediators themselves. And our view would be that the Court, based on the agreement we have, should appoint those two individuals as the mediators. In terms of the protocol, I obviously represented to Your Honor that that's something we're prepared to meet and confer with the other

parties about. If Ms. Speckhart wants to be involved in that, we wouldn't, obviously, say no to that. And I do think it's reasonable to expect within a week we could come up with something, or at least identify what the issues are to which we can't agree.

THE COURT: All right.

So you would be looking for the appointment as of today? Or --

MR. GORDON: Yes. As you know, Your Honor, we've wanted to move forward with mediation for quite a while. You know, the big issues that we were facing that were impeding that have been resolved and, you know, we know there's appeals and those appeals will go forward, but we'd like to get started.

THE COURT: All right.

Ms. Speckhart?

MS. SPECKHART: Your Honor, it is our perspective that one week's time is a very short window, and an appropriate period in which we should be able to have the conversations with our clients about the very substantive mediation that they're about to embark on, and at least be able to diligence the identity of the mediator so that they can be comfortable with who will be conducting the proceedings. And we will be prepared to move as fast as is necessary to facilitate a consensual result at least on the protocol at this point.

THE COURT: All right. Thank you.

Okay. Mr. Russo, was he one of the nominees for the FCR?

MR. GORDON: He was, Your Honor. He was one of our nominees.

THE COURT: I think the Court is going accede to the start of a consensus. And we can build on that. Certainly, looking to have the mesothelioma group comfortable with the mediation process. But I see no prejudice as to getting mediators onboard now. Composition can change going forward. Issues can change, protocols can be adopted. But if we -- I'm certainly comfortable with Judge Schneider. I've reviewed Mr. Russo's -- I have his resume here. I reviewed him as a potential FCR. And if I have a group representing 38,000 claimants comfortable, I think that's a start.

So I'm going to authorize the appointment of those individuals, Judge Joel Schneider and Gary Russo, as mediators going forward, without prejudice and under reservation of rights of others to weigh in if there are others or if there are issues that arise with their appointments. But I'll ask the debtor to circulate an order.

All right. Before we get to the contested retention applications, are there any other issues?

MS. SPECKHART: Your Honor, just one point of clarification. Consistent with the reservation of rights that

you just provided in respect to the identity of the mediators --

THE COURT: Yes.

MS. SPECKHART: To the extent that there is a gating issue after we have the chance to confer with our clients, is that something that you would like us to raise with Your Honor within the next seven days --

THE COURT: Yes.

MS. SPECKHART: -- so that you could conduct a telephonic hearing on the one-week schedule?

THE COURT: Yes. I mean, if something is problematic, not simply a preference, but a real problem, then certainly, I want it brought to the Court's attention.

MS. SPECKHART: Okay. We'll do that as soon as possible.

THE COURT: All right.

MS. SPECKHART: Thank you.

THE COURT: Thank you.

Mr. Gordon?

MR. GORDON: Your Honor, Greg Gordon, again, on behalf of the debtor.

I think Mr. Defilippo just sent me this note, which is a good one. He wanted to ask me to clarify that in coming up with these additional candidates for FCR, we're presuming it doesn't really make sense for anybody to propose someone who's

been stricken.

THE COURT: Well, if one side or another has struck, whatever the proper grammar is, a candidate, I think it -- I can't see all of the sudden a revitalization in that candidate. So I think we know who's been struck and I would say there are sufficient quality candidates out there to consider.

MR. GORDON: And then, the only other thing, Your Honor, was we filed, I think relatively late last night, some papers with respect to a securities action, and --

THE COURT: Yes.

MR. GORDON: I'm sorry. Part of that request included a TRO and a request to schedule a hearing in fairly short order on that, so I did want to bring that up at some point.

THE COURT: My courtroom deputy is probably working on sending out a scheduling for Thursday at 10:00 a.m.

MR. GORDON: Okay. Thank you, Your Honor.

THE COURT: Thank you. On the initial TRO.

All right. Turning to the agenda, the following matters are being, while contested, are being adjourned: the application of Houlihan Lokey -- These are all being adjourned to the March 30th hearing. -- the application of FTI Consulting, the application of The Brattle Group, as well as the motions for stay relief or motion seeking confirmation that the stay doesn't apply with respect to certain insurance

coverage. So those matters are being carried to the 30th.

There is the issue -- before we get to the matters going forward today, there are three contested retention applications for Counsel for TCC2, the Sherman Silverstein firm, which I think an order had been entered inadvertently, the Cooley firm, and Waldrep Wall. I guess my question is, first of all, are the objections simply -- Mr. Sponder, are they U.S. Trustee objections?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee.

Your Honor, we've worked out our issues with all of the three law firms and certifications -- supplemental certifications have been filed on the docket.

THE COURT: So is there any reason not to approve those retentions?

MR. SPONDER: The United States Trustee doesn't have reason, but I also think that the debtor had an objection on file, so.

Thank you, Your Honor.

THE COURT: Mr. Gordon? I mean, we recognize that by April 12th, there may not be a TCC2, but I hate to have these just lingering out there because then, we have to extend and protect them for any work done from now through April 12th, the same issue we had before.

MR. GORDON: That's right.

Greg Gordon on behalf of the debtor.

We had objected, Your Honor may recall, and I can't remember all the exact details. Because of the uncertainty with the Committees and the potential that based on the outcome of the issue of the two Committees, that there was arguably duplication among these Counsel. At the same time, you know, we recognize that these Committees have carried forward. It's certainly not, from our perspective, an issue of whether they should be paid or not.

It's just a matter of what to do with them at a time when the ultimate status of these Committees hasn't been determined. So I think we feel if there's separate Committees, it's proper. But, you know, the Court's -- this is sort of metaphysical to me, you know. The Court's ruling was it was never proper to have these two Committees appointed in the first place.

And so, it's a long way of saying, I guess from my perspective, there would probably be a way to fashion an order that fits the unusual circumstances we're in and doesn't prejudice our position with respect to the two Committees or the other side's position with respect to the two Committees. I think if we could do that, at least speaking for me, we'd be comfortable with that.

THE COURT: Okay. Thank you.

I think it does make sense to enter orders approving

the retention, maybe with a reservation of rights in the event TCC2 no longer, if and when it no longer exists, that the retention is discontinued, or something to that effect. Unless, of course, and I understand there's appeals. Nothing is easy in this case.

(Laughter)

MS. SPECKHART: Nothing is easier, Your Honor. But I think, just as a logical consequence of TCC2's potential or eventual dissolution, the order would terminate on its own and we can make sure that that's clear. But I think I speak for all of the three referenced firms. First of all, we appreciate the debtor's accommodation and acknowledgment of reality and also Mr. Sponder's work with us in resolving all the outstanding objections.

But at the same time, I think that all three of us have held off in filing any monthly fee statements, just because we didn't want to be presumptuous or offend the Court about the status of our retention. So I appreciate that you've taken this up today and we'll make sure that the order conforms to your directive.

THE COURT: Great. So we're going -- those are Docket Numbers 1079, 1080, and 1091, and the Court will await language orders that have been circulated.

(Counsel is conferring off record)

MS. SPECKHART: Okay. Thank you.

Your Honor, Mr. Abramowitz helpfully reminded me that there is a related issue of the typical submission of reimbursement of expenses for Committee members. I think that those are handled in a way that's usually connected to the monthly fee statements of lead counsel or local counsel. I'd have to check the procedures in this Court. But we just want to make sure that we're okay to go ahead and process those in connection with Your Honor's ruling on the retentions themselves.

THE COURT: Yes, you are.

MS. SPECKHART: Thank you, Your Honor.

THE COURT: Thank you. Thank you, Mr. Abramowitz.

All right. Let's get to the main event.

Jones Day fee application -- on the fee application -- Jones Day retention application. We're still at that stage.

Mr. Gordon.

MR. GORDON: Greg Gordon, on behalf of the debtor, Your Honor.

So we are going completely digital today. In other words, we had a miscommunication in terms of hard copies of the PowerPoint presentation, so we've emailed it around. Everybody has it. We're happy to print it later for Your Honor, if you want it. You should have it by email as well.

THE COURT: Is it --

MR. GORDON: And of course, it's going to come up on the screen.

THE COURT: Is this different from the PowerPoint that was initially provided?

MR. GORDON: It's a little different because it's been updated.

THE COURT: All right.

MR. GORDON: But it's --

THE COURT: Well, then, I'll look at it on the screen.

MR. GORDON: But our apologies for that. That was just a bit of a miscommunication.

Okay. Next slide please.

And the next. And the next, please. Okay.

So, Your Honor, these next couple of substantive slides, just sort of, I think, establish the basics, or the basic facts that, in our view, make clear that there's no actual conflict. There's no potential conflict and, in effect, there's no reason to disqualify Jones Day.

So I think, and I know some of these things, maybe all of them, the Court's already well aware of, but I think the record is very clear that on October 12, 2021, our representation of J&J in connection with the corporate restructuring terminated, and at the same time, our representation of the debtor began. And, of course, as Your

Honor knows, the debtor did not even come into existence until the time that the corporate restructuring was effectuated.

And this is an important fact, because when you look at the standards under 327, the focus is, you know, the verbs are in the current tense, the focus is on whether there's an existing conflict. And a lot of the focus of the objectors is on the representation prior to the time when we became counsel for LTL. And so it's not a concurrent representation issue.

As the slide says, there was simply no overlap. These were successive representations. One ended, the next one followed. In terms of J&J, and we've heard a lot about our supposed representation of J&J, I think the record's clear we did not represent -- the firm does not represent J&J in connection with this Chapter 11 case. It does, however, represent J&J and matters unrelated to the case, and I tried to provide through my declarations in support of the application some detail on that. And, in part, I think that was in response to the U.S. Trustee who had raised some questions about the extent and some additional detail on the types of matters.

And as my declaration reflected, those matters are largely intellectual property matters. And the other thing I think my declarations made clear, that from the standpoint of the firm, generally, the amount of fees was very, very small on a relative basis. Less than, I think one half of 1 percent of

the firm's fees in each of the 10 years leading up to the bankruptcy filing.

Next slide please.

Next slide.

Now, again, I know Your Honor's very familiar with the funding agreement. I won't spend much time on this. And, in fact, Your Honor spent a fair amount of time on this in your opinion. But the funding agreement to us is very key, also for purposes of the Jones Day retention application, because from our perspective, it shows or establishes the alignment of the parties that are involved here. The alignment of LTL with New JJCI, the alignment of LTL with J&J.

And I should say, by the way, that, again, I think the record's clear, we don't represent JJCI. We never have. And that's another reason why there's not a concurrent representation problem. But, again, Your Honor is well familiar with the funding agreement. This is obviously a huge benefit to this estate.

In fact, it seemed to go up in the minds of TCC2, primarily during the dismissal hearing, when they argued that there was an absence of financial distress at LTL, primarily because of the funding agreement. I mean, there's literally no material conditions on the requirement of funding by both New JJCI and J&J.

Of course, as Your Honor knows, it's not a loan.

There's no obligation to repay. And, you know, I think it's important what Your Honor concluded with respect to the funding agreement, which is down at the bottom of the slide, which is the funding agreement between the debtor on the one hand and J&J and New JJCI on a joint and several basis on the other is not intended to and is unlikely to impair the ability of talc claimants to recover on their claims. And, you know, that to me undercuts many of the arguments the objectors have advanced as to why Jones Day has an actual conflict that warrants disqualification.

Next slide, please.

And next.

So just starting with some of the basics here, Your Honor, you know, debtor's choice of counsel is entitled to the great deference. That comes from the Enron case. The court there also made clear that, you know, disqualification really shouldn't be based on conjecture or speculation or perhaps inferences about the situation. And I would submit, Your Honor, that much of what you're going to hear from the objectors is speculation about things that could potentially happen down the road and things, frankly, that there's no reason to expect they would ever happen.

Next slide, please.

So the analysis, in our view, and this comes from the Marvel case, which I know Your Honor is well familiar with,

really breaks down into three pieces in our minds. One, whether there's an actual conflict which would require disqualification in the absence of some alternative to disqualification.

The second is a potential conflict. And there, I think it's clear that courts have wide discretion to decide what to do in the event of a potential conflict. And they have wide latitude to approve retentions, notwithstanding the potential for a conflict.

And then there's this idea of an appearance of conflict. And I would suggest that much of the objections that you've seen and will hear today really come down to an appearance of conflict. And we think it's clear in the Third Circuit that's not a sufficient basis to disqualify counsel.

Next slide, please.

In the supplemental objection that was filed within the last week or two, there was a suggestion that the standard is something different than what we believe the Third Circuit prescribes the standard to be. And that was a standard to the point of the counsel has to be aloof from all connection with the debtor or its management.

So think about that, that you would represent a debtor but have to be completely aloof from the debtor or its management. And then this other "like Caesar's wife," you have to be above suspicion. And Collier was cited for that, and the

Granite Partners case out of the Southern District of New York was cited for that.

And if you take a look at Collier, you see that this was taken completely out of context because the Collier cite is talking about a situation where counsel is being retained by a trustee, not by a debtor. And the point that was being made was, if you have a Chapter 11 trustee who's being brought in as an independent party, then the counsel should be the same. And we would submit, that's not the situation here where you have a debtor-in-possession.

And Granite Partners was the same thing. It was also counsel for a trustee. And, moreover, in that case, the court found that there was inadequate disclosure about the extent of the council's involvement with a party that had a significant relationship to the case.

Next slide, please.

We've had some back and forth. I won't spend a lot of time over whose burden it is. We think the cases are clear that there's a shifting of the burden if the debtor has basically made its case through its filings. And we submit that we did that through the initial application with the declaration that was appended to that, and then, of course, also including the additional declarations that were submitted as well.

And at that point, then the burden shifts to the

objectors who have a substantial burden to present evidence of a disqualifying conflict. And you can see that concept about the shifting of the burden comes out of the Boy Scouts case, and also out of the Caesars case as well in the Northern District of Illinois.

Next slide, please.

So, this again, this slide, Your Honor, just reinforces what I said before, which really focuses more specifically on what Section 327 provides. And the BSA quote, I think, is significant where the court says "The Third Circuit has instructed that professional holds a prohibited adverse interest where that professional holds or represents interests in competition with the debtor that would actually, as opposed to speculatively, impair its service as an estate fiduciary."

So, again, there's that focus on a current representation and one that's competing against the representation of the debtor. And then, of course, you can see from the Section 327 language itself, it's written in the current tense. And, again, in this case, Jones Day has no concurrent representations. The debtor is the only party that we represent in connection with the case. The only other representations we have are of J&J in matters that are completely unrelated to this case.

Next slide, please.

So these are kind of stating some obvious points.

Obviously, LTL is not J&J. It is important to recognize that J&J has its own counsel on this case. Ms. Lauria is here today. Your Honor acknowledged here earlier. New JJCI has its own counsel on this case. That's Ms. Lauria, as well.

And the idea that you have successive representations, where one terminated and another began, is not a basis to find any kind of conflicting present interest.

And, you know, it's been suggested that the representation of the debtor is a continuation of its representation of J&J. And we would submit that's not the case. We had a specific representation of J&J in connection with the restructuring. Once that was completed, the restructuring occurred and we immediately then became counsel for LTL in connection with the bankruptcy case.

Next slide, please.

The -- you know, our brief, particularly our reply brief, I think all of them have many, many cases that we've cited. We've just highlighted a few cases we've cited in support of our position.

But you can see in Enron, that was a situation where there was an effort to disqualify, I think it was Milbank, based on work it had done and transactions prior to the case. And the Court found there that even though those transactions were subject to investigation, there was no basis to disqualify.

And in the American International Refinery case, it was a similar situation based on pre-petition work and where there was an allegation that, based on that work, there was an inability to offer objective device -- advice, I'm sorry, to the debtor in the bankruptcy case. Next slide please.

You know, the Marvel case, just to go back over this, it makes clear that disqualification is not appropriate based on an appearance of impropriety. And the Court, I think, was very practical in reaching that ruling, finding, you know, if we were to allow that, you can imagine what kinds of arguments could be advanced in literally every case against counsel retained by a debtor.

And of course, and I'll come back to this, where you have a potential conflict, the question there, whether it's a conflict that's likely to occur or whether it's remote, and if it's remote, that's not a basis for disqualification either. And that's -- that comes out of the Jade case, which is an unreported Third Circuit case.

Next slide, please.

This slide just provides a little more detail on potential conflict and when a potential conflict might get to the point of -- of warranting a disqualification. But the idea here is that a potential conflict exists where an attorney does hold or represent a conflicting interest. So you're actually representing somebody who has a conflicting interest, but the

attorney's not likely to be in a position to favor that interest over the debtor's interest.

So you've actually identified something, a representation that's potentially problematic, and then the question turns to, okay, so I see there is a potential because of the -- the different situations of the two parties, but is that potential likely to occur or is it remote? And again, from Marvel, an apparent conflict isn't enough.

And again, if it's remote, that's not enough either, again from the Jade case.

Next slide, please.

Okay. These cases -- and again, there's others that we've cited. This is Muma Services, 22 Acquisition, Hurst Lincoln Mercury. They all generally stand for the interest that -- or the -- or for the proposition that disqualification isn't appropriate where interests are aligned.

So even if you represent a third party outside of the case, out of a Chapter 11 case, who has some interest in the case, if the interests are aligned, there's no basis for disqualification, there's no basis for concern.

And you can see here one involved a -- and by the way, these were concurrent -- again, concurrent representations, which we don't even have at this point. You have one with a shareholder, involving a shareholder, concurrent representation, but the parties were united in

interest. That's the Hurst case.

You had another with a debtor and a secured lender and also a consulting firm. I think it was partially owned by the secured lender, as I recall. And again, the Court was okay with that based on the -- based on the conclusion that the parties' interests were aligned.

Next slide, please.

And here, we would submit, Your Honor, that the record establishes that the interest of the debtor, J&J and New JJCI, are fully aligned. They all share an interest in an equitable and efficient resolution of talc claims in this case through a Chapter 11 plan.

You've got J&J and New JJCI are obligated to provide backup funding under the funding agreement. Your Honor is aware of the fact that J&J and New JJCI have agreed to provide a two -- provide $2 billion as a prepayment under the funding agreement to go into a qualified settlement fund for the exclusive benefit of -- of claimants in this case.

And there's just -- there's no dispute under the funding agreement. There's nothing the objectors can point to, and there's no reason to believe that one will occur. And I thought Your Honor's opinion had a very commonsense point about that. It would just be nonsensical to accept the notion that J&J and Old JJCI would bear the brunt of public and judicial scrutiny, as well as the time and cost to implement this

integrated transaction simply to stall claimants or walk away from its financial commitments under the funding agreement.

And I would submit that that practical observation applies here, because, again, you're going to hear the other side argue today that we're on the opposite sides of the funding agreement, we're on opposite sides of the V, where there's conflicts between the debtor -- or potential conflicts between the debtor, J&J, and New JJCI that create problems for our retention application.

And I would submit, Your Honor, there's just no basis for any of that. That's sheer speculation, and it's speculation that, frankly, is not believable, based on where we stand today and based on the fact that there have been no defaults under the funding agreement. Funding is being provided as contemplated. And we as counsel for the debtor see no reason to believe that that will ever change.

Next slide, please.

So I kind of foreshadowed this point, I think. The other is, you know, obviously, we've had arguments like this come up in other cases, not necessarily in the retention context, but in the other cases in North Carolina, lots of concerns raised by the Plaintiff's Bar about potential defaults under the funding agreement and the like. And there hasn't been a single instance in any of those cases where there's ever been a default either.

And you know, the last point, which I'll come back to, it's not our intention, Jones Day's intention to ever be involved if there is a dispute. And the way I've always thought about this is the concern that's fundamentally being raised is that LTL is a subsidiary ultimately of J&J. It's a subsidiary of New JJCI. And whether Jones Day is counsel, or whether some other firm is counsel, it's always struck me as highly unlikely that either a court or a committee would want counsel for the debtor involved in suing its ultimate parent or even its intermediate parent. And that's one of the reasons I made the offer I did in connection with the dismissal hearing.

And I think we even said it in our papers, that we would expect if there was a breach at some point, that we wouldn't be involved in that. If there was some reason to pursue litigation against the parent, or against any of the affiliates, which we can't envision at this point, that we wouldn't be involved in that. I think everyone would agree to that, I suspect.

Next slide, please.

So, Your Honor, this is just an attempt to capsulize an issue that came up a little bit later in the briefing, which was the move from 327 into, well, let's look at various rules of professional conduct. And the argument was made that this representation violates various of those rules.

And from my reading of the cases, sometimes courts

look at these rules, sometimes they don't. I don't think it's mandated, as best I could tell, under the Third Circuit authority, but it sort of doesn't matter in this case from our perspective, because we don't think there's any violation of any -- any of the rules.

And you've got -- the ones that are primarily raised, yeah, these are model rules, and then you can take them across to New Jersey and the like, and they're all pretty much the same. 1.7(a), 1.8(b), and 1.9(a), in pretty much all of those, the evidence shows that there's no issue because Jones Day is not representing the debtor directly adverse to another client. Jones Day is not representing any client in a matter directly adverse to the debtor.

And there's no limitation on Jones Day's representation of its work here based on work it's done for other clients. And again, that's largely because of the alignment of interests of the parties. And again, we don't even represent New JJCI. And then there's more detail underneath which I won't go into, just taking these rule by rule.

But again, if you look at these, they're -- they're largely rules that are not surprising in the sense that they're raising issues when you have an actual conflict. They literally, where you're actually on both sides of the same issue with two clients at the same time, or you've put yourself

in a position where your representation of one client is limited by your representation of the other. You just can't go there based on the services you're providing to the other.

And again, these are concurrent situations largely other than a 1.9(a), which talks about a former client, which really isn't applicable here because of the fact that we have successive representations. We've got successive representations.

Okay, let's go to the next slide.

And I'm just going to go through these very quickly. The only reason we have these slides from the record is there was a suggestion in the latest supplemental brief that one of the reasons we should be disqualified was the fact that there was evidence in the dismissal hearing that suggested that our board really was not given sufficient information even to make the decision about a bankruptcy filing.

And I think that was sort of suggested it was indicative all of this is Jones Day working for J&J and not for the debtor. And so these -- yeah, there was a focus on the fact that the employees are secunded, but overlooking the fact that Mr. Kim, for example, as you know, is secunded full-time to the -- to the debtor. Our client is LTL. Our primary representative we report to is Mr. Kim.

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And again, I'm not going to spend much time on these,

but I think there was significant testimony during the dismissal hearing that suggested that, in fact, the Board had sufficient information to -- to decide -- make the decision to file for bankruptcy.

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Again, here's Mr. -- testimony from Mr. Kim talking about the preparation he did and the information he conveyed to the Board and what his intentions were.

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And kind of more of the same here. And this was specifically responding to the comment that the Board were just mushrooms and really had no will of their own, no information, they were just kept in the dark and were being manipulated by J&J.

Next slide, please.

The latest supplemental brief included some time entries, which I think were included for the proposition of showing that our real client is J&J, and we would just suggest, having looked at those entries, they show no such thing. They just show that, in fact, unsurprisingly there have been communications with J&J and affiliates in connection with the case that will also show -- I think virtually every one showed that White & Case was involved in those calls representing those entities as well, and Mr. Kim was involved in most, if not all, of those time entries as well.

And again, I think you would expect that there would be communications among parties whose interests are aligned or have a common interest, and particularly ones that are part of a corporate enterprise like we have here.

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So I think ultimately, what much of the objections devolve into is allegations that the restructuring essentially effectuated a fraudulent transfer, which I would say, again, as I pointed out a couple of weeks ago, it seems inconsistent with their arguments that were being made about LTL not being financially distressed. But nonetheless, that's largely what it -- that devolves into.

And again, I think the Court's rulings in its opinion on dismissal basically belie those -- those arguments. And to us, you know, to suggest that -- that an allegation of fraudulent transfer in the face of an opinion that would seem to largely suggest there is no basis for a fraudulent transfer, just can't be a basis to disqualify a law firm.

I mean, that's arguably at best a potential conflict that is decidedly remote, based on the record. You know, if there's a risk at all, it's decidedly remote, based on the record that we have.

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The other side, obviously, for this point relies on two of Judge Whitley's -- well, actually his findings of fact

and conclusions of law in his two PI rulings in both Aldrich and DBMP. But it's important to keep in mind that Judge Whitley made very clear that his findings were preliminary and he even acknowledged they could just be considered as dicta.

And again, these in my mind become much less significant in the wake of the ruling Your Honor made following an extensive hearing and a substantial record.

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Then Your Honor, again, I won't spend a lot of time on this, because this is well briefed, but the cases that are largely relied on to suggest that we have a disabling conflict are cases involving a preference. You've got the First Jersey Securities, the Fleming case, and then Pillowtex, which I'm embarrassed to say I was involved in that, even though it was a really long time ago.

But all those -- I mean, to me, those were very different cases where there was a determination that there was a facially plausible claim, and it was a preference. And as Your Honor knows better than I do, a preference to me is a much more objective situation than -- than actual or constructive fraudulent transfer.

And you know, in Pillowtex in particular, the case was remanded because the Third Circuit felt like that issue had to be resolved. And I think there, the Court had a concern that we understand that the firm's willing to pay back a

preference if it's determined that way, but we also think, as debtor's counsel, you're potentially in a position to determine whether that litigation is even pursued.

And that to me is very different from the situation here, particularly where we've already said that -- that we wouldn't be involved if -- if there is a -- if this court were to find that derivative standing is appropriate, that there are colorable claims that could be asserted, again, we wouldn't -- we wouldn't stand in the way of that. And Jones Day wouldn't be involved.

And then the -- you have this New Jersey case, the Banco Popular case, which is cited as really the only basis for saying that Jones Day itself has liability for a fraudulent transfer. And I'm sure Your Honor has read the case by now, but to us that's a very different case on a very egregious set of facts and at a very early stage in the case, and just really talking about what you could plead in the face of facts where it seemed pretty clear the attorney was in that case complicit in some misrepresentations that were made in connection with a loan.

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And again, I won't spend much time on this. This came up in the more recent briefing, this Plastronics case. This was actually a Texas Divisional Merger case. And again, I think it's cited for the purpose of trying to establish that

Jones Day has a disabling conflict because we did something where we were involved in a transaction that achieves something similar.

And I would just submit that the Plastronics case is easily distinguishable. Again, a very egregious set of facts where a contract was entered into with respect to payment of royalties and a divisional merger was subsequently undertaken, I think, to basically undercut the agreements in that contract, to directly undercut them.

Next slide, please.

And then there was the suggestion that we have a disabling conflict because we have a business interest in a successful outcome. And I would submit, even if that were true, that's a positive, not a negative. And we've cited to the Rules of Professional Conduct that, you know, we're to represent the debtor with commitment and dedication to its interests and with zeal and advocacy on its behalf.

And this debtor strongly desires to resolve this case as quickly as possible and to reach a trust that would pay out -- pay out equitable amounts to similarly situated current and future claimants. And that's what our -- I hope our representation has demonstrated to date, that that's what we're -- that's not only what LTL is committed to, but what the debtor -- I'm sorry, what Jones Day is committed to as well.

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This is largely to show that the criticisms just seemed to -- to devolve -- the criticisms in terms of actions undertaken in the case to date just seemed to devolve down to criticisms that we're not doing what the Plaintiffs want us to do.

And so the fact that we supported a divisional merger, well, I think as Your Honor found, that was a valid state transaction. No one's come up with a basis to argue that it was done in violation of Texas law or any other law. They focused on the venue, but, you know, as we argued to Judge Whitley in North Carolina without success, we thought that was an appropriate forum based on efficiencies that would result because of its prior knowledge and experience with these cases.

They've taken issue with the fact that we requested the injunctive relief we did, which Your Honor granted, but that's -- that's threshold relief in these mass tort cases. It's been granted in most cases where it's been needed, if not every case where it's been needed.

They took issue with the fact that we would argue that there was an indemnity between the debtor and J&J and JJCI, but as Your Honor knows again from the evidence, that went all the way back to transactions that occurred in 1979.

They took issue with the fact that we moved to appoint an individual as FCR. Again, that was all in furtherance of having this case move forward. As Your Honor

knows from prior hearings, we -- our goal was to get an FCR in place as soon as possible, get the mediation as soon as possible. And that's all consistent with the interests of the debtor.

And then, of course, the qualified settlement fund, there was criticism about that and there continues to be, as I understand it, objections to that, even though from our perspective, that's nothing but a benefit to the claimants and that -- you know, that matter will be heard later.

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So in some respects, I guess the -- you know, the question is who's trying to gain an advantage here and what is -- what is happening? Again, we've made clear that in terms of potential fraudulent transfer litigation, if there are any -- if there are any basis to do that, we won't be involved in that.

The other side has already said very forcefully to Your Honor that they intend to pursue derivative standing. And so that issue will be teed up. If -- if we were to choose to object to that on the basis that the claims aren't colorable, whatever they might be, Jones Day would not be involved in that. Mr. DeFilippo can handle that, and we'll just stay out of it.

And so, you know, given that -- given those circumstances, and given the fact there's not a concurrent

representation that creates a problem, given the fact there's not a potential conflict that's anything other than completely remote if it exists at all, then what is -- what purpose would be served by disqualifying the firm?

And, you know, that in my mind raises the question of whether this is just a litigation tactic to try to shunt the firm aside and bring someone else in.

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There was also an argument made under Rule of Professional Conduct 3.7 that we should be disqualified because we would be a witness. And, you know, the one thing I would say to this is, boy, if this were accepted as a basis for disqualification, you could probably gen up an argument -- this argument up in virtually every case, given the fact that lawyers in every case pretty much are representing a debtor or a party in connection with the bankruptcy prior to the filing. And you just have to come up with some dispute and say, I would plan to depose the law firm or take discovery from the law firm, so I would submit this isn't an appropriate basis.

And it's particularly not because, you know, were we representing J&J in connection with the restructuring? Yes. Would that make us a witness? No. I mean, we were serving as counsel. That's the role we were serving in. Our advice would be privileged or otherwise protected and not discoverable.

And to us that just would not be at all a basis to

argue that there should be a disqualifying -- or disqualification of the firm.

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Alternatives. Next slide.

So, because of this concern about the corporate restructuring, should we be disqualified? The answer is no. I mean, this is effectively, again, an issue that's moot based on the position we've taken.

And obviously, I've just -- we provided the quote of part of what I said to Your Honor at the conclusion of the dismissal hearing with respect to either an examiner or derivative standing.

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You know, Caesars, the Court recognized there were better solutions than disqualification that should be considered. And obviously the reason for that is because I think courts try to have the debtor -- or try to permit a debtor to use the counsel of its choice, unless there's something that's so egregious that that's not appropriate.

We -- we try to make clear, both in our pleadings and in the additional declarations, one from Mr. Kim, one from Mr. Haas on behalf of J&J, that all are basically supportive of or in agreement that there could be conflicts counsel to step in, in the event there's ever any kind of conflict that comes up in the future, which again, we don't foresee. But we just wanted

to cover that off that our client, LTL, and J&J has been the focus of so much of the substance of the objections. They've both agreed that that's not an issue. They're okay with that.

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And, of course, a reservation of rights is also appropriate. And we've seen a reservation of rights used in the Paddock case. And it was used in the three North Carolina cases as well, with basically the concept being that you have the right to seek -- any appropriate relief in the future is fully preserved, as are the debtor's corresponding rights.

So in other words, if something comes to light in the future, you're not foreclosed from raising it in the future. And part of that, you know, I think at least I can say in the North Carolina cases, the debtors were willing to agree to that, because we -- we could not foresee that ever happening.

In all of these cases, we've attempted to be very transparent about what we've done. We've tried to be very fulsome with the disclosures we've made, not only in terms of our representations, but also in terms of the transactions that were done.

And so I think we're comfortable based on that, that a reservation of rights is appropriate. It's probably the law anyway, that if something were to come to light later that showed there was a problem that it could be brought up later, but that could be utilized here as well. And we're -- that's

-- that's perfectly acceptable to us to have similar language in a retention order here.

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So just to sum up, the debtor's choice of counsel is entitled to deference. We would submit the objectors have not met their burden to show that we should be disqualified. We think the record is clear that the debtor has no actual or potential conflict within the meaning of Section 327. Among other things, the interests of the debtor, J&J, New JJCI, they're all aligned.

You know, in these other cases in North Carolina, we've not been disqualified. It hasn't even been argued before. And, you know, here, we try to make it clear that conflicts counsel is available. We're okay with that. We'll stay out of issues that we think potentially create a conflict for us.

Also, as I've indicated, the reservation of rights, a language we're comfortable with. And so we would submit that it makes sense and it would be beneficial to the debtor and for the estates to have the company move forward with its chosen counsel, Jones Day, and we would ask Your Honor to approve our retention application.

THE COURT: All right. Thank you, Mr. Gordon.

MR. GORDON: Thank you.

THE COURT: Mr. Pfister.

MR. PFISTER: Still morning. So good morning again, Your Honor.

THE COURT: Still morning.

MR. PFISTER: Rob Pfister from the Klee Tuchin firm on behalf of Aylstock Witkin.

I have three preliminary points and then two main points. Preliminary notes, number one, I'm glad I lost back in December and that Jones Day is getting paid for all the work they've done through the trial. This is not about whether Jones Day should be paid for the work that they have done; they certainly should. And so that was a battle that I lost and -- and pleased I did.

Second, no issues certainly from me. I won't speak for the other objectors. But regarding this, you know, sliver of work that Jones Day has done on behalf of J&J regarding IP and other matters where Jones Day was apparently their longtime counsel in certain of those matters, I don't view those as -- as an issue.

And then the third preliminary point, I'm not going to deny that this court's rulings on February 25 are something of an earthquake in many respects, but at least as to this, in terms of changing the landscape of what we're arguing. So I'm certainly not going to go into certain other points that had they -- had the rulings come out differently that we might otherwise be talking about.

So with those preliminaries, let me make my two main points. Under any version of the facts here, this bankruptcy case was filed for the benefit of Johnson & Johnson. The record is clear that Jones Day, which hadn't previously represented Johnson & Johnson in talc litigation matters, that was Skadden, Jones Day approached Johnson & Johnson with a solution for the talc liability that Johnson & Johnson was facing.

Jones Day came in with a proposal to do this Texas Two Step or divisive merger, or however you want to call it, and said, you know, here's a plan for how we can deal with this.

They have then proceeded from that first approach forward until, you know, through and including today, to continue to execute that plan. In doing so, I don't think there's any doubt that the benefit or the entity that is being benefitted ultimately is Johnson & Johnson.

That being the case -- and I don't think there's any dispute as to any of those points -- you know, the Court -- the Court in its February 25 opinion, you know, praised the debtor’s transparency in saying, look, everybody knows what's going on here. Nobody's trying to hide anything. Mr. Gordon is, you know, saying the debtors are transparent.

Well, if we're going to be transparent, let's be completely transparent. Why are we going through the charade

of saying that something happened on October 12th when Jones Day allegedly got this letter from its now former client Johnson & Johnson terminating the representation and another law firm, White & Case, was hired by Johnson & Johnson and gets dragged to court for every hearing, doesn't say anything, but is here, you know, technically formally representing Johnson & Johnson.

You know, why -- what is the point of doing any of this? And I'll just say, you know, parenthetically, if Jones Day had approached Johnson & Johnson earlier in 2021 and said, Let's do this great Texas Two Step, had proceeded to execute everything and then had stayed counsel for J&J, this wouldn't be an issue. Then have the new debtor, the newly created, you know, LTL entity hire White & Case and, you know, let White & Case do the debtor work.

You know, I'm not saying the Two Step would be okay. It certainly wouldn't from, you know, from my view, but again, that's not what we're here arguing today, but there wouldn't be an issue. But what -- you know, it's just not credible to assert that on October 12th, when LTL was created, Jones Day took off its J&J hat and that is now a former representation that has been concluded and that now Jones Day is here only representing the debtor in this case and that White & Case, which again, I mean, I've been to every hearing in this case, I don't think I've ever heard them say anything, and that was the

party on whose behalf all of these proceedings are being carried on. That's the first main point.

Second and last point, this goes to Jones Day as a -- you know, as a business. And we are, of course, a profession, but lawyers are also -- there's a business of law. And the fact of the matter is, again, whatever you think of the Texas Two Step, this is something new under the sun.

It may be as Mr. Gordon believes, you know, the greatest thing for corporate America since sliced bread. It may be not the greatest thing since sliced bread. I think Your Honor's opinions recognize that, you know, this won't be the last word on the topic and courts will continue to examine this. But nobody thinks, or nobody at least I've heard, has failed to acknowledge the reality that this is something brand new.

And this brand new thing has been developed by Jones Day. They have sold this to, you know, four prior courts -- or four prior clients, rather. And then again, they came to Johnson & Johnson and said, Have we got a plan for you, you know, let's do this. No other law firm has done this. No one else is filing these cases.

I don't know, you know, what cases may be filed in the future, but I wouldn't be surprised if Mr. Gordon's phone is ringing off the hook these days. And the fact of the matter is that Jones Day as a business has a vested interest in this

Two Step itself working, not in the success of the debtor LTL, but in the Two Step process itself.

So, you know, what does that mean? That could mean that if there are other options -- so -- so as long as everything goes according to the playbook, right, and you know, there's a settlement in the 524(g) trust, everything else confirmed, everything has gone according to the Jones Day playbook, they say, Great, it's all kosher.

What if at any point in the process someone wants to go off the track a little bit? What if on October 12th, after the new LTL entity was created, then it wouldn't have happened, because these are all former J&J people who are just secunded, their ultimate loyalty, ultimate interest is to J&J, but what if they did have independent advice? What if they were represented by somebody who was looking out solely for the entities' interests, right? Would the advice have been the same? I'm not sure it would have been,

Again, if you accept the Two Step construct that this is a way for an entity to shed liability and that, of course, the subsidiary is going to do what the parent entity wants, then yes, what they did all makes sense.

What if you don't accept that construct? What if you say on October 12th, Hey, you know what, I have this new entity, I have this unlimited funding commitment, you know, commitment, maybe I'll start negotiations, maybe I'll do

something else. The fact of the matter is we'll never know, right?

Same point. What if there comes a point in this case when the debtor, which, you know, has significant rights under this multi-billion dollar funding agreement, what if there comes a point when it would be beneficial for the debtor to take some position that, again, veers off the track that's been created by the law firm? Can we have any expectation that they are going to get advice in that regard? I don't think we can.

So again, I'm recognizing in my argument the impact and effect of the Court's rulings on February 25. But if we're going to be transparent, let's be transparent. Why are we going through this charade? And maybe in the next Texas Two Step, Jones Day will just represent everybody throughout the entire case. It will represent the parent, it will represent the debtor, it will represent, you know, settlement trustee. I mean, you know, who knows? It could represent everybody.

But there's a reason that they at least tried to paper the file with, On October 12th, your representation has concluded and you are now a former client.

It's just not credible, Your Honor. And that's all I have. Thank you.

THE COURT: All right. Thank you, Mr. Pfister.

Mr. Jonas.

MR. JONAS: Good morning, Your Honor.

THE COURT: Good morning.

MR. JONAS: Jeff Jonas from Brown Rudnick for TCC1.

Your Honor, let me just start by saying that I have great respect for Mr. Gordon and Ms. Brown and their firms. Our retention objections are not in any way attacks on those firms. Rather, they're based on the facts and the law as we see it. And we believe the retentions -- and I'll first address of course only the Jones Day retention, but based on the facts and the law, we believe the retentions are not appropriate.

And Your Honor, I also appreciate the Court's ruling on the motions to dismiss. And that said, you know, the ends don't justify the means. That is, not withstanding your rulings, these retentions have to be examined independently.

And with that, Your Honor, I'll just say there -- there's been -- I'll be brief today. There have -- we've filed a number of -- a number of pleadings, including some substantial layout of the cases and the facts as we see it and references to the trial and -- and the record.

And so I won't repeat any of that as set forth in our papers, which we rely on as well. But rather, I'd just summarize and highlight a very few key points.

And most critically and fundamentally, Your Honor, Jones Day -- Jones Day's representations now are -- it's a little bit of what Mr. Pfister said in a slightly different

way. They are continuations of the pre-petition work for Johnson & Johnson and Old JJCI.

Jones Day spent months and earned millions of dollars working for J&J and Old JJCI on the strategy and the structure of this debtor and its bankruptcy case. As demonstrated and I think proven at the motion to dismiss trial, Jones Day was on all sides of everything. They developed and implemented this bankruptcy strategy for Johnson & Johnson. And again, I don't think there's any question about that. There was no negotiation of anything, most notably the funding agreement, and the bankruptcy's sole purpose is to address J&J and what was Old JJCI's talc liability.

So it is really dancing on the head of a pin to say that on October 12th, again, echoing Mr. Pfister's argument, but to say that on October 12th, when the debtor was born, Jones Day stopped working for Johnson & Johnson. It's simply not believable to expect that on October 12th and since then Jones Day could set aside its allegiance to J&J and take on the debtor's duties to talc claimants who are directly adverse to J&J.

More concretely, it's neither reasonable nor fair to expect that Jones Day could or would challenge, never mind prosecute an action if necessary, the Texas Two Step as a fraudulent transfer or otherwise, or the funding agreement, including to bring claims in connection with the funding

agreement, if necessary.

And remember, Jones Day continues to work directly for J&J on other matters. As Judge Friendly in the Matter of Ira Haupt case, Second Circuit case from 1966, said, quote, The conduct of bankruptcy proceedings not only should be right, but must seem right, close quote.

These retentions are neither right, nor seem right. The motion to dismiss trial testimony, including that of Mr. Wuesthoff, showed the debtor's lack of independence from Johnson & Johnson. And I appreciate again the Court's ruling, and it is what it is, but I would repeat the fact that, in effect, the debtor is not independent from J&J. And the Court and the world at large, watching the trial, witnessed J&J's in-house litigation lawyer, Mr. Haas, sit in the well of the courtroom and direct Jones Day and the debtor's personnel in carrying out the motion to dismiss trial.

They are neither officers of the debtor, all of whom are secunded from Johnson & Johnson, or lawyers who are truly independent of Johnson & Johnson. The Jones Day time records we've seen to date indicate constant interaction with Mr. Haas and other J&J lawyers, including regarding critical strategic issues.

The Court has determined this debtor's bankruptcy was not filed in bad faith and should remain in bankruptcy. The least that creditors, in this case talc claimants, should be

afforded is to be able to rely on the debtor and its professionals meeting their duties to creditors so they -- so that they can at best get a fair shake. We think that's impossible here.

As set forth in our papers, the foregoing facts support denial of Jones Day's retention under 327(a), based on both there being an adverse interest and Jones Day not being a disinterested person. And we believe that the record demonstrates both actual and potential conflicts, requiring that Jones Day's retention be denied.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Jonas.

Mr. Sponder.

MR. SPONDER: Is it morning or afternoon? Good morning, Your Honor.

THE COURT: It’s still morning.

MR. SPONDER: Good morning. Jeff Sponder from the Office of the United States Trustee.

Your Honor, the United States Trustee objects to the retention of Jones Day because Jones Day's employment by the debtor is a blatant and indisputable conflict of interest that should disqualify it from service under even the most lenient readings of the Bankruptcy Code and the ethical canons.

And to be clear, Your Honor, we're not talking here about a mere appearance of conflict, a speculative future

conflict, or the possibility of a conflict. The conflict here is actual, present, and palpable.

As the Court is well aware, the divisive merger, also referred to as the Texas Two Step, that led to the creation of the debtor, is a central issue in this case. Even though the Court denied the motion to dismiss, the transactions by which the debtor came into existence and the events leading up to the October 4th -- October 14th, 2021, bankruptcy filing will continue to loom large in this case.

Jones Day's prominent role in these events is the reason why it should not be approved as counsel for the debtor. Jones Day's pre-petition work for non-debtors J&J and JJCI that led to the debtor's creation will continue to be under a microscope in this case.

As the Court noted in your -- in the opinion on the motions to dismiss, and I quote, Remedial creditor actions addressing the pre-petition divisive merger and restructuring remain available for creditors to pursue if necessary. And that's at page 32 of 56 of the opinion.

Your Honor, I'll first set the stage for the Court by summarizing the evidence on Jones Day's involvement in the divisive merger and its prior and continuing role on behalf of J&J, JJCI, Old JJCI, and New JJCI. I will then present how, based on these details, Jones Day clearly does not meet 327(a) standards as it represents an interest adverse to the estate

and is not disinterested.

Further, Your Honor, Jones Day's retention violates applicable rules of professional responsibility, in particular as counsel from that firm will certainly be key witnesses in the inevitable fraudulent transfer litigation that is to come.

Jones Day admits it worked closely with J&J officers to structure and implement the divisive merger. And that's at Docket 1190-1, Your Honor, at paragraph 6. In paragraph 10 of its reply, which was filed on January 18th, 2022, Jones Day touts its prior representations of J&J and the now non-existent Old JJCI in the restructuring and announces that the work it performed for these other clients, and I quote, facilitated Jones Day's knowledge of the assets and liabilities allocated to the debtor and contributed to Jones Day's experience in this complex area. That's also at 1190, Your Honor.

Jones Day even cites its work assisting J&J and JJCI to deposit their liabilities into the debtor as a basis for why the Court should approve its retention. Jones Day readily admits that during the eight months immediately preceding the bankruptcy filing, Jones Day represented J&J and JJCI in formulating, structuring, documenting, and implementing this bankruptcy case and the 2021 divisive merger that created the debtor.

All but one of the directors and officers of the debtor are long-standing J&J employees. And that's from the

February 14th, 2022, hearing transcript at page 97, lines 7 through 10, and who have been secunded to the debtor. The one director that has not been secunded is Mr. Deyo, who is a purported independent director and also a former J&J employee.

In its reply, filed before the motion to dismiss trial, Jones Day stated that its professionals work closely with individuals who now serve in the debtor's management, as well as other professionals who had been advising J&J and Old JJCI. That as well is paragraph 6 in Docket Entry 1190-1.

Your Honor, the trial testimony, however, painted a different picture. Robert Wuesthoff, the debtor's president and one of its three board members, was not approached about becoming the debtor’s president until a mere two weeks before the debtor's formation, despite having no professional or other experience with bankruptcy, talc litigation, litigation of any kind, or the concept of fiduciary duties.

While Jones Day was working for eight months, Mr. Wuesthoff wasn't offered the job until late September or early October, and he didn't accept it until October 8th, 2021.

Clearly, Your Honor, he was not a member of debtor's management with whom Jones Day worked closely. In fact, at trial, Mr. Wuesthoff did not know who Mr. Gordon was, and Committee counsel had to explain he was lead attorney for the debtor's bankruptcy case.

Important transactional documents, such as the

funding agreement, were not negotiated by the debtor or even Old JJCI officers, including Wuesthoff and Goodridge. Indeed, the debtor's participation would have been impossible as it did not exist at the time the agreements were finalized.

Jones Day argues in its reply that it is debtor's chosen counsel and debtor's choice should be given great deference. And that's also at 1190. However, Your Honor, the debtor never chose Jones Day. In his initial certification, Mr. Gordon states the debtor was assigned the Jones Day engagement with Old JJCI. Clearly Jones Day was J&J's choice of counsel for the debtor. It was not a choice made by the debtor. And as with the rest of the transaction, Jones Day is in place to benefit J&J.

Even the debtor's officers know LTL was created to benefit J&J. As testified to by the debtor's president, the divisive merger was done to assume the J&J conglomerates talc liabilities. And that's the February 14, '22 hearing transcript at pages 134, line 25, to page 135, line -- through line 13.

Similarly, Your Honor, John Kim, the debtor's chief legal officer, testified that the purpose of the debtor was to assume all the talc liability of the J&J conglomerate, file for bankruptcy, and use the debtor's filing to stay all talc-related litigation against J&J. And that's the -- from the February 15, '22 hearing transcript at pages 194, lines 6

through 9, 196, lines 1 through 16, and 199, lines 15 through 23.

As I'm sure Your Honor knows, the requirements of Section 327 cannot be taken lightly for, and I quote, they serve the important policy of ensuring that all professionals appointed pursuant to Section 327(a) tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities.

And that quote comes from Rome v. Braunstein, 19 F.3d 54. That's the First Circuit, 1994.

Here, Your Honor, Jones Day has a disqualifying conflict. It is not disinterested. Pre-petition Jones Day engineered and guided J&J and Old JJCI through the divisive merger to limit exposure to present and future claimants.

As the Court noted in its opinion on the motions to dismiss, and I quote, It is unsurprising that J&J and Old JJCI management would seek to limit exposure to present and future claims. Their fiduciary obligations and corporate responsibilities demands such actions. And that's at page 31 of 56.

To protect the interest of J&J and Old JJCI, Jones Day literally placed billions of dollars of talc liabilities into the debtor to create an entity whose only significant asset is the right to assert payment under a funding agreement from Jones Day's former clients, J&J and JJCI, the same clients

that now have a fiduciary obligation to their shareholders to pay as little as possible for a release.

Now Jones Day's fiduciary duty is owed to the debtor's estate, the talc claimants, and its mandate is to maximize their recovery. Maximization, though, necessitates aggressive action to obtain the maximum amount possible through implementation of the very documents Jones Day drafted to minimize J&J and JJCI's liability.

In the recent decision on the motions to dismiss, Your Honor made some observations about the likely path forward in these cases. And Your Honor identified two specific matters that are going to basically determine the outcome of this case. These matters are first the question of what J&J's obligations to the debtor are under the funding agreement and secondly, what are the potential legal claims the debtor has against J&J due to the divisional merger, whether under a theory of fraudulent transfer or otherwise.

Now, Your Honor, it is significant that these are both matters on which the debtor and J&J are absolutely adverse to one another and on which Jones Day itself seems to be on both sides at once.

Let's start with the funding agreement, which, as many testified, is the most valuable asset owned by the debtor. The funding agreement is the creation of Jones Day. It was paid for -- it was paid for this work by J&J. The value of the

funding agreement asset is unknown as it was not quantified at the time it was created. This is certainly an area of dispute and an issue for which Jones Day is -- Jones Day will be called upon to provide testimony.

It's important to note that once the debtor filed for bankruptcy, the backstop obligations of the funding agreement went away and were replaced with a promise by J&J to fund the debtor's bankruptcy trust.

Your Honor, how much does J&J need to pay and what are they supposed to get in return? The funding agreement doesn't say. And as the debtor has admitted, these are numbers that are going to have to be decided through negotiation. And the debtor, as well as Jones Day as its counsel, will have a fiduciary obligation to maximize the amount of funding the debtor gets out of J&J at these negotiations.

The problem for Jones Day is that it would be negotiating over a transaction that it designed when it was working for J&J on the other side of the table. Is Jones Day really going to sit down and tell J&J that it needs to pay more than it thought it was going to have to pay, regardless of what its old lawyer assured? Jones Day can't, Your Honor, and won't, because Jones Day is that previous lawyer.

This conflict becomes even more egregious when we look at some of the potential claims of the debtor against J&J outside of the funding agreement. As we pointed out, as the

Committee has pointed out, as just about every commentator who has been following this case has pointed out, and as Your Honor yourself mentioned in your dismissal opinion, the divisional merger and the possibility of avoidance actions arising from that merger are issues that are going to need to be very closely looked at.

And these are not trivial issues. If the divisional merger was a fraudulent transfer, which is the position that the Committee has taken, then the estate may have as much as a 60 billion -- and that's billion with a "B" -- judgment against J&J. And it's the debtor's fiduciary duty and Jones Day's duty as the debtor's proposed counsel to investigate those claims and to recover whatever it can for the benefit of creditors.

But that's not what the debtor and Jones Day have done, Your Honor. Instead, from day one of this case, they have loudly taken the position that these claims are worthless, that they don't exist, that they have no intention of litigating or even looking very closely at them.

In fact, the debtor sets forth that, and I quote, it clearly would never investigate the restructuring as a possible fraudulent transfer, let alone ask Jones Day to do so. And that's docket 1190-1 at paragraph 43.

As such, Your Honor, Jones Day can neither investigate the divisive merger, which it orchestrated, nor can Jones Day fulfill its fiduciary obligations to the estate

without the ability to investigate fraudulent transfers, including the divisive merger.

And it is frankly shocking and incredible that a lawyer for a debtor-in-possession would simply walk away from a potential multi-billion dollar asset like this. Shocking, Your Honor, but understandable, because the reality of the situation is that Jones Day is not an impaired observer in this dispute. Jones Day was the architect of the alleged fraudulent transfer, and that makes Jones Day an obvious investigation target and potential defendant.

If the transfer is invalidated, Jones Day may have issues with J&J. In any case, Your Honor, there is no question that Jones Day's personal interests are so tied up with the outcome of any fraudulent transfer action that they cannot be expected to act as a fiduciary on behalf of the debtor.

Additionally, as a result of its integral involvement with the divisive merger, Jones Day will most assuredly be a primary fact witness, which will call into question such ethical rules that prohibit attorneys from serving as counsel in the case where they are likely to appear as a fact witness on a significant issue.

Not only will Jones Day be a witness in such a case, it may also be a defendant in the litigation. Jones Day may bear equal liability to the estate and its creditors.

Again, Your Honor, through its retention application,

Jones Day seeks to continue representing the debtor and pursuing J&J, JJCI strategy that Jones Day developed and orchestrated for the benefit of J&J and JJCI.

Although there is no doubt of Jones Day's capability, as has been seen throughout this case, the Court and interested parties are now being asked to believe that Jones Day is beholden only to the debtor and not J&J and JJCI. How can this be?

As the strategy implemented by Jones Day on behalf of J&J and JJCI commenced pre-petition and continues through this bankruptcy, how can Jones Day not be beholden to J&J and JJCI? Advice that Jones Day -- I'm sorry, Your Honor. Advice that Jones Day purportedly delivers to the debtors is actually delivered to J&J, JJCI through secunded employees.

In fact, the monthly fee statements filed by Jones Day provides that there was direct reporting to J&J from Jones Day. The monthly fee statements filed by certain other debtor professionals also reveal multiple weekly calls with senior J&J executives.

Your Honor, we would also like to respond to the debtor's suggestion that if the Court finds that Jones Day is conflicted on matters relating to the funding agreement and the merger, it could cure that conflict by requiring the appointment of conflicts counsel.

While that approach might have some merit in a case

where the conflict involved a minor or peripheral matter, it is not an adequate solution in a case like this, where the conflicts involve the largest contested matters in the case and basically permeate the entire plan process.

And on this point, Your Honor, we would refer you to the Bankruptcy Court for the Southern District of New York, it's analysis in the In re Project Orange Associates, LLC, at 431 Bankruptcy Reporter 363, which found that conflicts counsel is not a cure for disqualifying conflict where the conflict involves a matter that is central to the case.

And that same analysis applies here, Your Honor, and the results should be no different if the Court chooses to grant the Committee derivative standing on some of these matters, although we note that no such motion for standing has been filed yet, and it's not clear if the debtor would even support or resist that motion.

The U.S. Trustee understands the potential prejudice to the debtor should its chosen counsel be denied and that case law suggests that debtor should be allowed to choose their specific counsel. However, Your Honor, the Court should not be persuaded by any prejudice the debtor may allege if Jones Day is disqualified. Even as recently as the trial and the motions to dismiss, and as I've said before, the debtor's president didn't even know who Mr. Gordon was.

Further, the U.S. Trustee was clear, Your Honor, from

the first hearing in his position that the retention issue should have been decided at that time. As set forth in the interim retention orders entered in this case, Jones Day was well aware of the retention issues and despite their existence agreed to continue to represent the debtor voluntarily and knowingly and assume the risk of the Court denying its retention.

Jones Day's pursuit of its strategy developed in representing J&J and JJCI pre-petition and its continuation of such strategy post-petition renders Jones Day not disinterested and adverse to the estate.

Litigation over what J&J's obligations to the debtor are under the funding agreement and litigation of potential claims by the debtor against J&J due to the divisional merger place J&J and the debtor adverse to one another and on which Jones Day itself seems to be on both sides.

Jones Day will also certainly be a fact witness in any litigation, including fraudulent transfer litigation arising from that divisional merger.

Your Honor, for the reasons set forth on the record today, as well as the reasons set forth in the United States Trustee’s objection, as well as the other objections, the United States Trustee respectfully requests that the Court sustain its objection and enter an order denying the debtor's retention of Jones Day.

I thank you, Your Honor.

THE COURT: Thank you, Mr. Sponder.

Mr. Sponder, did the U.S. Trustee file any written supplemental objection?

MR. SPONDER: There was no supplemental objection filed, Your Honor, just the regular objection.

THE COURT: Back in November?

MR. SPONDER: I don't know exactly when it was filed.

THE COURT: Okay. I raise the point only because you obviously read through quite a bit of argument that included citations, elements of the transcripts, and yet without having a written in advance -- a written product, it kind of deprives the Court of the ability to truly comprehend the meaning of the citations or look at the precedent that has been cited. It somewhat handcuffs the Court, just for the future.

MR. SPONDER: My apologies for that, Your Honor. And I try not to file too many things when there's no -- when -- when there's nothing that says you can file, can't file. I did see those that were filed.

THE COURT: Clearly, nobody has been inhibited in this case.

(Laughter)

MR. SPONDER: That's my point, Your Honor. But, you know, I typically stick to that point.

THE COURT: And I appreciate the workload. It's just

a matter of being able to absorb from -- from the oral argument is somewhat difficult.

MR. SPONDER: Understood, Your Honor.

THE COURT: Thank you.

Anyone else as an objecting party? I see no one on Court Solutions.

Mr. Gordon, any reply?

MR. GORDON: Just a few things, Your Honor, and I'll work -- I'll work backwards here.

I think with respect to the United States Trustee, largely the arguments devolve into a strong belief apparently by the U.S. Trustee that the divisional merger harmed Plaintiffs, that it effectuated a fraudulent transfer, and that disqualification is obvious based on that.

And I would say there's nothing really in the record that supports that. Those are just arguments to me with -- with no substance.

The one thing I did want to react to though was this idea that because we did work for J&J, there should be skepticism about whether we would maximize assets. And to me, that's looking at this case the wrong way.

In light of the funding agreement, I would say that there's no -- there should be no real concern that assets are there and available. And there's no reason to question that Jones Day would do anything other than maximize assets.

The issue in the case isn't that. The issue is what is the extent of the liability? And that's what we're going to be mediating about. That's what we would ultimately potentially be estimating in the absence of a mediation. And I would submit that the interests of LTL, J&J, New JJCI are completely in alignment on that. And that's where the parties have to ultimately reach a meeting of the minds.

So when Mr. Jonas suggests and the U.S. Trustee suggests that we're in a position where we can't properly observe our fiduciary duties or respect our duties to claimants, I mean, what are we talking about? I mean, is there seriously a concern that Jones Day won't maximize or preserve assets?

As I tried to say earlier, and I think Your Honor got it right, there's no reason to expect there's going to be an issue, but that's not really what the question is. It's almost like the arguments that are being made are you need to have someone in place who will agree to a high number, and that wouldn't be appropriate, obviously.

The issue in this case is what is the extent of the liability? And again, I think there's no conflict with respect to that. The interests are all aligned.

Obviously, Mr. Sponder said a number of times as well it's obvious that Jones Day would have to be a witness in this inevitable fraudulent transfer proceeding or attack on a

divisional merger. And for the reasons I argued earlier, I would submit that that's -- that should not be the case.

The other thing I want to -- just wanted to remind everyone of is this argument that this Texas Two Step, this is all a new strategy, it's never been done before, it's a reason why Jones Day shouldn't be allowed to be counsel, but of course, we're forgetting again the Owens-Illinois case, the Paddock Enterprises that I talked to Your Honor about before.

That's not a Jones Day case, by the way. Mr. Pfister said we've handled each of these cases. That was a case filed by Latham. A very similar approach. They called it something different. They didn't use the Texas divisional merger strategy, but the transaction was effectively the same.

Garlock, same thing. Another law firm there. And, of course, there was no disqualification of counsel in either case, no determination that counsel was conflicted, actually conflicted where it couldn't be involved.

And I wonder how far these arguments go, if counsel was involved in some kind of restructuring prior to the bankruptcy, whether on the eve of the bankruptcy or several months before, is that disqualifying in every case? That's kind of what I'm hearing from the U.S. Trustee and potentially Mr. Pfister, that because you're involved, that somehow there's a taint that goes with that, and it's not appropriate for the firm to also serve as counsel.

Mr. Pfister also said a number of times that all of this was a charade, it lacked credibility. I think Mr. Jonas has said the same thing. I think what -- what the Committees and the parties have lost sight of is the fact that we were asked to represent the debtor.

And all the -- the facts that we provided with respect to the successive representations just to me show how a firm properly positions itself to be able to do the work, you know, again, with the authorization and permission of all the relevant parties that you have to terminate one representation to take on the next. That's -- that's not a charade. I mean, that's -- that's just the result of the fact that the decision was made that the firm should represent LTL in connection with the bankruptcy. That was the choice that was made.

And then ultimately, I guess the last thing I would say, with respect to Mr. Pfister, he made a number of sort of general arguments about the significance of the merger and the significance of this approach and how important this is to Jones Day. But I would say they didn't tie any of that back to the actual standards under Section 327.

And all of that, even if it were true, to me did not establish a basis to suggest either an actual conflict or a potential conflict for all the reasons that I argued initially.

So again, Your Honor, I would ask that Your Honor approve the retention application.

THE COURT: All right. Thank you, Mr. Gordon. Well argued on all sides.

The matter comes before the Court upon the application for retention by the Jones Day law firm. This court has jurisdiction under 28 U.S.C. 1334. This is a core matter under 28 U.S.C. 157(b).

Let me first -- allow me first to just review some of the basic applicable law from within our circuit. The Third Circuit has made clear that disqualification of a law firm is an extreme remedy. And under the Third Circuit's precedent, disqualification depends on a review of the facts of the case, and is not automatic by any means.

The courts within our circuit have been mindful of a litigant and a debtor, in this case, right to counsel of its choice, and have thus created a burden which is exceptionally high, as motions to disqualify are viewed with significant disfavor within the Third Circuit as a potential abuse of litigation technique.

I'm not suggesting that that's the case here. There are obvious questions that have been raised and I believe addressed.

As the -- as the Third Circuit has noted repeatedly, my starting point for professional retention under Section 327(a) is, for the most part, a two-part test. To be retained as counsel, the applicant must not hold or represent an

interest adverse to the estate and must be a disinterested person. And a disinterested person is defined in relevant part as someone without an interest that is materially adverse to the interest of the estate.

Now, the purpose behind these requirements is to ensure effective representation of the bankruptcy estate, not any individual creditors, not any individual party. But in other words, they're designed to ensure that the professional is able to act in the best interest of the estate and can competently and vigorously represent the bankruptcy estate, including the debtor-in-possession.

The Third Circuit advises or instructs that a professional will be deemed to hold a prohibited adverse interest where such professional holds or represents interests that are in competition with the debtor and that would actually, not speculatively, impair the service and its obligations as an estate fiduciary.

The perspective is to be gleaned from the -- from that of the estate, and counsel is disqualified under 327(a) only if it presently holds an interest or represents an interest. And the -- its prior representation is not necessarily disqualifying.

Turning to this case, the Court, of course, builds on its findings of fact and conclusions of law in the opinions resolving the motions to dismiss as well as the pending

adversary proceeding at the time seeking a preliminary injunction.

The Court finds that Jones Day does not hold or represent an interest that is directly adverse to another client or to another party in this case, obviously apart from the creditors themselves, and that the interests of the debtor are fully aligned at this juncture with Johnson & Johnson and New JJCI.

And those that -- that finding is important because the alignment of the interests serve to ensure that Jones Day is not going to be in competition or that its client, rather, is not going to be in competition with what's in the interest of these estate.

What are these aligned interests? These are an interest in reaching a global settlement of the talc liabilities through a Chapter 11 process.

The Court does not find that the debtor is in competition with Johnson & Johnson at this juncture or New JJCI and that the prior representation of Johnson & Johnson which ceased prior to the filing does not serve to disqualify Jones Day at this juncture.

The Court does not find that Jones Day pre-petition representation of J&J or Old J&J creates a situation where it will favor the interest of those entities or New JJCI over that of the debtor.

The Court's findings with respect to the motion to dismiss do not support a determination that there is an actual disqualifying conflict. Again, I would point out at this juncture, at best or at worst, depending upon your perspective, there is a potential conflict which this Court does believe can be addressed through the retention of conflict counsel. But at this point in time, the Court has no record upon which it can make a finding that there is a facially plausible claim against the debtor or by the debtor or by the bankruptcy estate against Johnson & Johnson.

It is clear that Jones Day will not be involved if there is such a dispute that arises with respect to the funding agreement or with respect to any potential claims that arise out of the 2021 corporate restructuring. It is undisputed, at least in the Court's eyes, that the 2021 corporate restructuring was an integrated transaction. That's been established.

But there has to be more than simply that restructuring to disqualify Jones Day from representing the debtor and only the debtor in this bankruptcy estate. The Court does not accept that Jones Day's representation contravenes any of the applicable RPCs that have been cited: 1.7, 1.8, 1.9, or 3.7.

With respect to the lawyer as a witness, indeed, that RPC only applies for situations at trial. It was intended to

ensure that juries would not be confused by a lawyer's advocacy versus factual testimony. And it doesn't disqualify an entire firm. But the reality, and the Court accepts the reality that it's unlikely that Jones Day will be testifying given the vast majority of its information would fall under work product/ attorney-client privileges. We already visited some of those issues as part of the discovery with respect to the motions to dismiss.

The Court certainly envisions or believes it would be proper to include a reservation of rights for the parties, should there be -- should the facts warrant taking issue with their continued representation.

Going back to the conflicts issue, the Court is comforted by the significant body of case law that allows the retention of conflict counsel to address disputes that arise. The Court differs with the U.S. Trustee, respectfully, as to what is central in this case.

The Court does not believe the 2021 corporate restructuring is central to this bankruptcy. It was a vehicle which enabled the bankruptcy. It may give rise to claims that are potential at this juncture. But what is central to this bankruptcy is resolving claims, claims of injured parties and funding those claims. That does not involve the corporate restructuring.

There is also an overwhelming body of case law which

supports a court's ruling to permit retention even where there is the existence of a disqualifying factor. In other words, courts have approved retention of law firms notwithstanding certain conflicts with RPCs when doing so is in the best interest of the bankruptcy estate.

Courts have looked to the time and money of getting involved in getting new counsel up to speed, the delays that would be reflected in replacing counsel, the amount of work involved by counsel to date, the amount of time and effort necessary to get new counsel up to speed. And, certainly, there's no question as to the complexity of this case to date.

And the Court questions whether replacing the firm of Jones Day were it so required would truly be in the interest of the bankruptcy estate. But the Court doesn't need to get there because it's not finding that there is a disqualifying basis to preclude retention.

For those reasons, the Court overrules the objections that have been raised and will approve Jones Day's retention *nunc pro tunc* back to I guess October 14th and will ask counsel to circulate a proposed form of order because the Court wants to ensure that there is the proper reservation of rights. Thank you.

Now we have both Weil Gotshal and Skadden.

MR. PRIETO: Your Honor, I think it's afternoon now, so good afternoon. Dan Prieto of Jones Day on behalf of the

debtor. Your Honor, I'll start with Weil.

With respect to the Weil application, Your Honor, the debtor is seeking to retain Weil as special counsel pursuant to 327(e) to continue to represent the debtor in the Imerys and Cyprus cases. And as Your Honor may be aware, Weil has been representing parties in that case for almost three years now. So the debtor desires to have the benefit of that extensive knowledge and experience on a go-forward basis. Weil will not represent the debtor as general bankruptcy counsel, and its role will be limited to, you know, the Imerys and Cyprus matters.

Your Honor, there was an objection filed by the Committee. We have had some meet and confers, maybe not recently but in the past. And I think based on those meet and confers, my understanding is the issues are largely if not entirely resolved.

There is one open issue, I believe, that the parties may need Your Honor's input on and that was raised at the last hearing. And that relates to a statement made in the supplemental certification of Ronit Berkovich in support of the application, and that's Paragraph 16, Your Honor. I'll go ahead and just read it:

"Johnson & Johnson on occasion has sought Weil's views on issues that are related to the debtor's Chapter 11 case but are outside of the scope of

Weil's retention by the debtor under 327(e) of the Bankruptcy Code."

So my understanding is I think the Committee does have an issue with that, potentially. I'm not sure from the debtor perspective what the issue is because from the Debtor's perspective, the fact that Weil wants to provide its views on these issues to J&J doesn't really run afoul of the standards of 327(e).

As Your Honor knows, special counsel only must not be adverse to the debtor with respect to the matters for which they're being retained. And this advice to J&J has nothing to do with the Imerys and Cyprus matters be definition. It's outside the scope of the retention. And, of course, that advice would not be paid for by the debtor. It would be paid for by J&J.

In addition, Your Honor, I did want to note that while I don't believe it's required by 327(e), Weil has agreed, and this is in their certification, that it will not represent J&J in any matters adverse to the debtor or its estate. So it's taking it a step further.

So the debtor doesn't see an issue with this. Obviously, if Your Honor has a concern, we're happy to address it in any order approving Weil's retention. But I wanted just to address that issue.

THE COURT: I assume Weil Gotshal wouldn't be paid by

the estate for advice being given to J&J.

MR PRIETO: That's correct, Your Honor. That would be billed only to J&J.

THE COURT: All right. Let me hear from objectors. Thank you.

MR. PRIETO: Thank you, Your Honor.

MR. JONAS: Your Honor, Jeff Jonas, Brown Rudnick, for TCC1. It is a very discrete issue, Your Honor, and I think Mr. Prieto largely got it correct. Our problem is we don't think it's appropriate for Weil at one time or at the same breach representing the debtor to also be providing advice relating to the debtor's bankruptcy to Johnson & Johnson. Just too close for comfort, Your Honor.

Johnson & Johnson has plenty of bankruptcy lawyers, including White & Case and others. We don't think it was appropriate for -- to be able to shave it right down the line and be able to talk about on the one hand they say they won't provide any advice adverse to the debtor. I don't know what that means in the context of if they're providing advice to Johnson & Johnson about this bankruptcy, it very well could be adverse, Your Honor.

So that was our only issue with the retention.

THE COURT: I'm going to leave it to counsel to draft the order. But I believe Johnson & Johnson could clearly look to White & Case for its advice relative to this bankruptcy.

And I don't think it needs to look to the debtor's counsel for it. So I would agree with that limitation. There are other -- Weil Gotshal's a great firm. There are other firms that they could provide advice to Johnson & Johnson.

MR. PRIETO: Thank you, Your Honor.

THE COURT: Thank you.

So the Court will approve the retention subject to that limitation.

MR. JONAS: Thank you, Your Honor.

THE COURT: And that's going forward.

MR. PRIETO: I appreciate it, Your Honor. We'll prepare that order.

THE COURT: I'd like to take a ten-minute break. I think other people would like to take a ten-minute break. So we'll come back at a quarter of.

MR. PRIETO: Thanks.

THE COURT: Thank you.

(Recess at 12:35 p.m./Reconvened at 12:51 p.m.)

THE COURT: It's good to see people in a better mood.

MR. PRIETO: We're almost done, Your Honor.

THE COURT: We're getting there. All right, Counsel.

MR. PRIETO: Your Honor, for the record, Dan Prieto of Jones Day on behalf of the debtor. Your Honor, I think the next item on the agenda, hopefully the last one on the agenda, is the Skadden application.

Your Honor, the debtor is seeking to retain Skadden as special counsel because of its extensive experience and knowledge gained as trial counsel and its national discovery counsel of Old JJCI in the talc-related litigation. Initially, in these cases, the debtor planned to retain Skadden as ordinary-course professional to be available to address issues in the underlying state tort lawsuits in which they were involved.

But it soon became apparent that the debtor required Skadden's knowledge and expertise in these Chapter 11 cases. So as a result in I think it was mid-December, the debtor filed an application seeking to retain Skadden as special counsel.

The Talc Committee and the U.S. Trustee each filed objections to the application. And for the reasons Your Honor set forth in our reply and in our supplemental reply, the objections are misplaced and, we submit, should be overruled. So I'm not going to repeat all the various things in the pleadings, but I did want to address some of the key objections that have been raised.

So, first, Your Honor, the objectors argue that the scope of Skadden's retention is too broad. And as Your Honor is well aware, the standard for a 327(e) retention is that the debtor is not permitted to employ counsel to assist in the general administration of the estate. Well, the debtor, Your Honor, is not seeking to retain Skadden to do that. We just

had the Jones Day retention application. That's what Jones Day is doing administering these cases.

As we stated in the application, the debtor is seeking to retain Skadden for a limited and specific purpose which is to advice the debtor on issues relating to the defense of talc-related claims and to assist with discovery matters, all based on their pre-petition experience.

So the objectors argue that the work that Skadden did on matters in this case go beyond the scope of what we proposed to retain them for, and what they point to are depositions that Ms. Brown of Skadden, defendant in this case, as well as Skadden's role that it played at trial on the motions to dismiss.

And, Your Honor, as we explained in the reply as well as in the supplemental reply, Skadden did that work precisely because its experience and familiarity with the factual issues relating to the talc litigation.

As Your Honor witnesses, the Committees repeatedly raised talc issues in connection with the motions to dismiss and, in fact, the talc litigation and related issues were major topics of inquiry both in the depositions, Your Honor, as well as at trial.

And I think more fundamentally, Your Honor, it's simply not the case that Skadden's, you know, leading the administration of these cases or even led the defense of the

motions to dismiss. You know, Jones Day examined the expert witnesses and did the opening and closing legal arguments. What Skadden did was handle the examination of the fact witnesses and the closing argument with respect to the fact testimony, which I submit to Your Honor is consistent with their expertise on talc matters.

So, Your Honor, with respect to the scope, the debtor believes that the services Skadden has provided are appropriate and do not demonstrate that its administering these Chapter 11 cases.

Next, Your Honor, the Committee argues that Skadden's not even eligible for 327(e) retention here because it did not represent the debtor prior to the petition date. But, Your Honor, that just ignores the 2021 corporate restructuring which as we explained in the pleadings resulted in the allocation of Skadden's representation of Old JJCI and talc-related litigation, you know, the debtor. So there's clearly technical complaints with the statute, Your Honor.

And I would also submit that the Committee's position is contrary to the purpose of the statute which is to permit a debtor to obtain the benefit of pre-petition counsel's experience and avoid the inefficiencies of having different counsel which is exactly what we're trying to accomplish here.

And then, finally, on the point, Your Honor, I think the Committee cites a couple of cases that they allege support

the proposition that, you know, there wasn't pre-petition representation. But I would submit to Your Honor those cases are all in opposite based on this particular unique facts of this case. And as we explained in the reply, those cases don't involve an engagement agreement that was allocated to the debtor prior to the commencement of the debtor's Chapter 11 case or a situation like we have here where the proposed counsel served for many years as counsel in the litigation relating to the very liabilities that have been allocated to the debtor.

Next, Your Honor, the objectors claim that Skadden has a conflict because it represented both Old JJCI and then the debtor and J&J in the defense of talc claims. Your Honor, Skadden does not hold the represented interest adverse to the debtor or the estate with respect to the matters for which it is employed, and that's fundamentally, Your Honor, similar to what Your Honor just found with respect to Jones Day that the debtor and J&J have an identity of interests with respect to the defense of talc claims. And that is because they have the same interest in demonstrating the safety of the talc products at issue and in virtually every case, as Your Honor heard at the preliminary injunction hearing, the allegations against J&J and Old JJCI, now the debtor, are identical.

And the Committee does point to the potential for some kind of indemnity or contribution claim but, Your Honor,

with respect to those matters, those are simply outside the scope of Skadden's proposed retention here. They wouldn't be handling those matters.

And then, finally, with respect to the last prong of the 327(e) approval, you have the best interests of the debtor's estate. I don't think the objectors are really questioning, as far as I've read their objections, whether this is in the best interest of the estate. I think that's a fairly easy standard to satisfy, particularly where you have special counsel with the extent of the experience on important issues in the case that Skadden has.

And I would also underscore that, you know, Skadden's expertise with respect to the discovery issues has been pretty invaluable to the debtor's ability to respond efficiently and timely to the various discovery requests that we've received in the case. So, Your Honor, I would submit there's no doubt that retaining Skadden would be in the best interest of the debtor's estate.

And, Your Honor, the final issue I wanted to address that was raised by the objectors, I think this one was only raised by the U.S. Trustee, is *nunc pro tunc* retention. You know, admittedly here, the application was filed a couple of months into the case. But, Your Honor, I would submit that there's a reasonable basis for that relatively short delay in filing the application.

You know, as I mentioned earlier, the debtor originally contemplated having Skadden act as ordinary-course professional in the case. And, you know, then it became apparent early on in the case that we would need them to play a larger role. And I think, in fact, there was a request by the Committee to take them off the ordinary-course professional list and actually, you know, file an application. But that was right around the time the case was transferred, and there was some disruption there and some delay in sort of putting together an application and filing it which we did ultimately in mid-December, December 15th.

And I would say in terms of the prejudice, I don't think there is any here. From October 14th, the petition date, through November 14th, Skadden incurred about $30,000 in fees. And then in the next 30 days following that before the application was filed on December 15th, Skadden incurred a little over 300,000 in fees. So I think in the context of this case, that's pretty modest amounts.

And I would note that, you know, the claimants and the Committees aren't objecting to *nunc pro tunc* retention. So the parties in interest aren't opposing that. So for all those reasons, Your Honor, I would request that Your Honor approve the retention of Skadden and special counsel and overrule the objections.

THE COURT: All right. Thank you, Counsel.

Mr. Jonas?

MR. JONAS: Your Honor, Jeff Jonas, Brown Rudnick, for TCC1. I'll restate my respect in filing this for Ms. Brown and, of course, respect for Skadden. That's not what this is about. I think, Your Honor, also rely in our papers. I won't restate. I'll keep this very, very discrete.

Your Honor, the application seeks to retain Skadden under 327(e) for the following: A, assist the debtor in connection with any issues of proceedings implicating the factual and scientific basis supporting the defense of the underlying talc-related meso and ovarian cancer claims; B, assist the debtor with discovery relating to meso and ovarian cancer claims; C, assist the debtor in connection with any estimation proceeding for the debtor's talc-related claims; D, assist the debtor in any issues of proceedings related to the stay or other matters relating to talc-related claims in non-bankruptcy forums; and E, provide such other specific services as may be requested from time to time relating to defense, estimate, resolution of debtor's talc-related claims in the Chapter 11 case.

Your Honor, I won't belabor it. You were here, as I was, for the trial. And I participated in the lead-up to the trial and can tell you that Ms. Brown and Skadden, in my opinion, really ran the trial and they really ran the debtor's defense to the motion to dismiss. I think that is far beyond

the scope of what I just read to you, what is the intended retention of Skadden under 327(e). And on that basis, I don't think the retention can be approved.

That's really all I have to say, Your Honor. Thank you.

THE COURT: All right. Thank you, Mr. Jonas.

Other counsel?

MS. RICHENDERFER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. RICHENDERFER: Linda Richenderfer, again, from the Office of the United States Trustee.

I guess I'm going to pick up basically where Mr. Jonas left off. The United States Trustee objects to this retention because Skadden, respectfully, does not fall within the parameters of a Section 327(e) retention. 327(e) is only for -- is a more lenient standard and only requires that the professional or the attorneys who are going to be retained are going to not have an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

In the documents, the debtor says they're being employed basically to help us with the talc litigation like they always did previously for JJCI. Your Honor, I attended I think 90 percent of the depositions, and I was here for the entire trial. And I will tell Your Honor that they were defended, the fact witnesses were defended by counsel from

Skadden. And the fact witnesses included not only the officers of LTL but also officers and employees of J&J and JJCI.

Ms. Brown represented JJCI's president, Michelle Goodridge, J&J's Vice-President and Assistant Corporate Controller Adam Lisman, the head of Worldwide Consumer Health Thibaut Mongon. And she also represented Ms. Ryan who was formerly a treasurer of J&J.

Most importantly, Your Honor, and I think this is the part that concerns us the most, it was Ms. Brown during those depositions who instructed J&J and JJCI's witnesses not to respond to certain questions on the grounds that it would disclose attorney-client privileged information. These were privileges that didn't belong to the debtor. These were privileges that belonged to J&J and JJCI.

We've heard today from Mr. Gordon regarding the fact that J&J has its own counsel, White & Case, and that is indeed a fact. And why they weren't the counsel for those witnesses during the depositions remains unknown. As counsel for JJ/JJCI, they could have been asserting those privileges. But, no, it was Ms. Brown who asserted those privileges.

Your Honor was here and Your Honor heard the trial. Your Honor noted in your February 25th opinion that the labyrinth progression toward the creation of the debtor is somewhat overwhelming, and that is on Page 5 of Your Honor's February 25th opinion. I don't think there's anybody in this

room that would disagree with that conclusion, Your Honor. But the hearing on the motion to dismiss was to take us through that labyrinth. It was to go through that progression. And it was to focus on the funding agreement.

I heard Your Honor previously state that with respect to Jones Day, you see the interest of J&J, JJCI, and the debtor being aligned with respect to the liability. But, Your Honor, we have another issue here which is the funding, and it's the funding agreement. And Your Honor said also in your opinion on February 25th at Page 31, frankly, it is unsurprising that J&J and Old JJCI management would seek to limit exposure to present and future claims. Their fiduciary obligations and corporate responsibilities demand such action.

And so we have a dichotomy here, Your Honor, where we have Skadden going beyond the four corners of a 327(e) retention and representing the debtor in connection with its case through the work it did with respect to the motion to dismiss and then we have also Skadden during its 327(a) activities, Your Honor, representing J&J, JJCI, and the debtor on fundamental issues such as the funding agreement.

And the funding agreement, again, Your Honor, acknowledged it is management, J&J's management who would want to limit exposure. And it is the debtor, as the fiduciary for the claimants, who has the obligation to ensure that the funding is to the maximum extent in order to reconcile all of

the claims that are now facing the debtor.

Debtor has stated that they used Skadden at the trial because of its prior talc-related experience. Your Honor, no doubt about it, there were questions during the depositions and questions during the trial about talc liabilities, about the history of J&J's talc litigation. I think it is in Ms. Brown's certification that she states that Skadden became counsel for J&J and JJCI in 2019 on talc litigation. So we don't have -- they didn't have the whole history of representing the debtor, predecessors, J&J in talc litigation going back to the time of the beginning. They had been working with J&J for about two years.

But more importantly, Your Honor, the subject matter went far beyond that in terms of the discovery and in terms of the testimony presented during the trial. The subjects went into in great detail the labyrinth process that Your Honor stated and observed in your opinion on February 25th. Skadden is one of the few law firms representing the debtor who is relatively up to date in terms of filing their monthly fee statements. So we did have the benefit of looking at those, and they are on the docket at DI-1610, 1611, and 1612.

And they are replete with numerous, sometimes daily, meetings between Ms. Brown, other attorneys from Skadden, Mr. Haas, and Mr. White, Mr. Haas and Mr. White both being in-house attorneys for J&J. While White & Case occasionally appears in

a description, they're not all the time in the descriptions.

And I must say as someone that needs to review fee statements, I very much appreciated the very detailed nature of the Skadden fee statement because people were listing everyone who was on the telephone call, everyone who was at the meeting. And so if White & Case wasn't listed, one can presume White & Case wasn't there because if White & Case was on the phone call, they were listed and they were included. And there were many such meetings and phone calls that didn't involve anyone on behalf of the debtor. Occasionally, Mr. Kim was also listed.

I think, though, the striking thing, Your Honor, is didn't see Skadden going back and reporting to the board of directors or board of managers of the debtor regarding -- the depositions or the trial came later in February. We don't have the advantage of that one yet. But the reports on the depositions were not going back to the board of directors of the debtor, were not going back to Mr. Wuesthoff, the president. They were going back, the reports were being made to Mr. Haas and Mr. White.

So, Your Honor, I think at the end of the day, in conclusion, we think that the retention under 327(e) is, quite frankly, a non-starter, that the scope of what Skadden has been doing has expanded way beyond merely continuing in a representation as talc counsel and providing advice with

respect to talc litigation. It has gone into the 327(a) area. For that, they would need to file another application. There is a different standard that needs to be met. And there would be different information that would need to be included in a declaration to support that.

I would point out, though, to Your Honor, in the meantime that the role that we saw Skadden play during this trial far exceeded mere allegiance to the debtor; went into the area of also representing J&J and JJCI; and. in particular, Your Honor, I would point out again to the Court the assertion of a privilege on behalf of non-debtor entities during depositions of employees and officers of those non-debtor entities.

Thank you, Your Honor.

THE COURT: All right. Thank you, Counsel.

Anyone else before we go back to debtor's counsel?

(No audible response)

THE COURT: All right, Counsel.

MR. PRIETO: Thank you, Your Honor. Dan Prieto of Jones Day on behalf of the debtor.

Just a couple of things, Your Honor, starting with the point about the time during which Skadden represented Old JJCI in talc litigation. I mean 2019 is still a significant amount of experience, and I don't think anybody's questioning that Skadden doesn't have the expertise. But just so the

record's clear, that was referring to the time when Ms. Brown joined Skadden from Weil. And in her previous role at Weil, my understanding is she did represent Old JJCI. So the expertise and experience goes back further, and that's in part why the debtor wants to retain them under 327(e) to get the benefit of that experience.

In terms of the criticism about the debtor having Skadden defend depositions, Your Honor, in my experience, it's not unusual for debtor's counsel to defend third-party witnesses both in depositions and at trial if it relates to, you know, an issue in the bankruptcy case. And that's what we had Skadden do because I think as people have acknowledged, there were significant talc-related factual and other issues raised.

And I would submit to Your Honor that it would have been very inefficient for us to have Skadden address those witness depositions and testimony at trial but then bifurcate out the issues and have another lawyer come in and deal with other questions relating to non-talc issues. So, obviously, there were some non-talc issues that were brought up with respect to those witnesses, but we thought it was most efficient based on what we anticipated would be asked at those depositions and at trial to have somebody with her expertise be involved.

And the way we bifurcated, as Your Honor saw, was

Jones Day took charge of all the legal arguments and the expert witnesses. And we thought that was an appropriate division of labor under the circumstances.

Let's see, with respect to, you know, some conferences that were referenced, Your Honor, I haven't had the benefit of seeing what exact time entries she's referring to. My understanding from conferring with Mr. Kim is that, you know, we believe Mr. Kim was actually in all those conferences or most of them. And, again, it's not surprising, as Mr. Gordon said in connection with the Jones Day application, that the parties are talking among, you know, aligned parties in this case. So I don't think that's of any moment.

And then, finally, Your Honor, I just wanted to note that, you know, this issue about scope, it seems to be the primary objection still. And, you know, I want to refer Your Honor to a case that the Committee itself cited in its objection which is the Woodworkers Warehouse case, 323 B.R. 403, because I think it's helpful here. And that was a situation where special counsel there was responsible for handling cash collateral issues, responsible for dealing with the sale of substantially all the assets of the debtor and, also, for negotiating and preparing the KERP plan.

And you would have thought that with all that sort of issues central to the case, there would be an issue. But even under those circumstances, Judge Farnan on appeal ruled that

that was still appropriate to retain that counsel under 327(e) because of the wide range of services left to general bankruptcy counsel.

Well, Your Honor, that's the same thing here. I mean Jones Day is general bankruptcy counsel. We're handling the Chapter 11 case. We've brought in Skadden to deal with specific talc-related issues, and we think that was appropriate. And, Your Honor, we would ask that you overrule the objections and approve Skadden's retention.

THE COURT: All right. Thank you, Mr. Prieto.

Yes?

MS. RICHENDERFER: Your Honor, if I may?

THE COURT: Yes.

MS. RICHENDERFER: I rise -- Linda Richenderfer from the Office of the United States Trustee. I rise only hopefully to take one issue off of Your Honor's plate. I forgot to mention when I was up there that the U.S. Trustee withdraws its objection to the *nunc pro tunc*, if Your Honor decides that it is appropriate that they be retained. We withdraw our *nunc pro tunc* objection.

THE COURT: Thank you.

MS. RICHENDERFER: Thank you, Your Honor.

THE COURT: Thank you. I appreciate that.

All right. Again, this matter comes before the Court on the application under 327(e) by the debtor seeking retention

of the Skadden Arps firm for a specified special purpose.

(Dial tone)

THE COURT: That's not good. I didn't touch a thing. Timed out?

(Court and Clerk confer briefly)

(Pause)

THE COURT: All right. Back on? You can hear me, Bruce?

THE CLERK: I can hear you from here. We just want to make sure that on Court Solutions they can hear you.

THE COURT: And can those on Court Solutions hear me, if anybody would just respond.

MS. JONES: Yes, Your Honor. Thank you.

THE COURT: Thank you. Usually not hard to get lawyers to talk.

All right. Go back to where we are, this application to retain Skadden Arps under 327(e) for a specified purpose. The Court has jurisdiction over this matter under 28 U.S.C. 1334. It is a core matter under 28 U.S.C. Section 157(b).

327(e) permits employment of a law firm or an attorney for a special, a specified special purpose as apart from conducting the case in general so long as the attorney does not hold or represent an interest adverse to the debtor or to the estate with respect for the matter on which he or she is to be employed.

At issue in this application is really whether the nature of the specified purpose and the scope of the specified purpose as well as whether or not Skadden is indeed adverse to the debtor or holds any interest adverse to the debtor or to the estate.

Let's talk about the scope. There is no question that Skadden was to be retained under a limited retention arrangement intending to serve as special trial counsel and discovery counsel to the debtor to advise the debtor on issues relative to the defense of talc-related claims and their resolution during the bankruptcy. The intent was to draw on Skadden's pre-petition history, experience, and conduct, also, its extensive ECI experience.

Did that morph into a more general representation of the debtor during the course of this bankruptcy? Did it go beyond that limited purpose? The Court does not find that it did so.

The bulk of the work handled to date by the Skadden firm has been relative to the pending motions to dismiss and the preliminary injunction adversary proceeding. And those issues, those matters involve issues that were relative to the pending and past talc litigation. And they were clearly intertwined with the issues involved specifically with the motion to dismiss.

I do not know how you examine or how the Court would

be expected to examine the proper bankruptcy purpose of the underlying filing or the issue as to whether or not the debtor was in financial distress without examining as well the issues relative to the pre-petition talc litigation and its history. By that, I mean an examination of the projections, the valuations involved with the talc liabilities, the settlements that had been undertaken, the verdicts and their history, the indemnity cost, the estimation of the liabilities, the existing MDL.

All of that played a part and was the subject of extensive testimony and documentary evidence presented to the Court and all of which has nothing truly to do with the administration of the case under the Bankruptcy Code. It is not involved in conducting a Chapter 11 proceeding.

But for this Court to examine whether or not LTL had a proper bankruptcy purpose in filing the bankruptcy or whether it was clearly under distress at the time of the filing and recognizing, again, that it was a unified transaction, so to speak, so that we had to look at the history of Old JJCI and examine the litigations that were pending, the verdicts that have been reached, the projections going forward, the discussions undertaken by the board or the examination undertaken by the board in filing the Chapter 11 in light of the pending talc litigation and the estimated liabilities, involved the very issues that Skadden was retained to assist

the debtor in.

It is impractical to expect at a deposition for lawyers to engage in a tag-team effort every time an issue transcends beyond the specific talc litigation into the other critical issue that was at play in the motion to dismiss, meaning the funding agreement and the 2021 corporate restructuring. Those were critical, too, but they were separate and apart from the history -- well, they're not separate and apart, they were all intertwined, but those were different issues.

But to expect Jones Day to interject questions in that area and Skadden in the other areas during a single examination of a single witness, whether at trial or in pretrial discovery is unrealistic. The Court is persuaded that the debtor and J&J, as I said before, and Old JJCI and New JJCI all have an identity of interests in defending and addressing the pending talc litigation claims.

Therefore, the Court does not find that the Skadden firm is current adverse to the debtor in this regard. There is no question that the Skadden firm's engagement agreement was allocated to the debtor prior to the filing, so it meets the explicit terms of the statute under 327(e). I appreciate that the U.S. Trustee has taken the *nunc pro tunc* issue off the table.

But, again, in light of the interrelation between the

talc litigation issues and the history of the talc litigation and the estimation going forward of the indemnity and expenses of the talc litigation with the issues that were litigated as part of the motion to dismiss and the preliminary injunction hearings, the Court finds that Skadden's representation of the debtor to date falls well within 327(e) and is proper for retention.

Going forward, I think the Court's going to admonish the Skadden firm that those issues -- well, subject to the appeals that are pending in other proceedings that I'm sure to come down the road, but that the Court will be keeping an eye on the services that are being rendered by the Skadden firm versus Jones Day in the ordinary conduct of the case.

So the objections to date are overruled. The Court will enter an order approving the retention. I think that resolves that issue.

Mr. Stolz?

MR. STOLZ: Your Honor, just a few housekeeping matters.

THE COURT: Yeah. I was going to address a couple, but go ahead.

MR. STOLZ: Your Honor mentioned a call next week by phone on the mediation protocol.

THE COURT: Right.

MR. STOLZ: I'm not sure that Your Honor had

indicated a date and a time.

THE COURT: Well, the date was going to be March 15th, Tuesday. The time would be 11:30. I also -- well, do you have anything else on your checklist?

MR. STOLZ: I have a couple of other housekeeping matters. The three firms that are currently representing TCC1 were originally retained on behalf of TCC. And Your Honor indicated we didn't have to submit new applications. Can we presume that that will continue until April 12th, that we'll still keep operating under the original retention that we had from the TCC original?

THE COURT: Yes. To the extent you all want a comfort order that clarifies it, I'm amenable to that.

MR. STOLZ: We're submitting our monthlies and getting paid. That's all the comfort we really need, Your Honor.

(Laughter)

THE COURT: That's all the comfort you need? Okay.

MR. STOLZ: The third thing is TCC 1 has not filed its notice of appeal or its motion for certification yet. We wanted to see what was happening with the two committees today. We want to address the interlocutory issue Your Honor raised. Mr. Weinegrad (phonetic) tried to show me a case on his cell phone, but my sight is not good enough to read that. But we'll address that in our motion, and we'll file it by Friday which

will bring us within 21 days. And we'd ask just to be allowed to have that filed by Friday and returnable on the 30th.

THE COURT: That's fine. And if it goes beyond and if it goes to Monday, we'll do it on -- we'll just enter a short -- an ordering shortening time.

THE CLERK: Judge?

THE COURT: Yes.

THE CLERK: Can you just repeat that for the benefit of people on Court Solutions and Zoom because they're not picking up what Mr. Stolz said?

THE COURT: Do you want to come up to the mic and repeat it?

MR. STOLZ: I'll go up to the (indiscernible).

So we'll file our motion by Friday for certification on our notice of appeal. And Your Honor has entered a bench order essentially saying that it will be heard with the others on the 30th.

THE COURT: Correct. And we'll address the interlocutory nature as part of the briefing at that point in time.

MR. STOLZ: We'll address it in our brief and others can do so, as well. And just for the record, Your Honor, we have requested that the debtor consent to certification. They've advised us that they didn't consent in Bestwall and that it's still under advisement as to whether the debtor will

consent. So just wanted to let you know we met and conferred.

THE COURT: All right. Thank you.

Is that it on your checklist?

MR. STOLZ: That's it on my checklist, Your Honor.

THE COURT: The only other matter I wanted to touch on was the appointment of an examiner. We somehow skipped that over -- skipped over that. Since -- and I did -- I have reviewed the correspondence from both TCC Committees that raise objection to the appointment of an examiner at this point in time.

I think this also goes hand in hand with prospective derivative-standing motions that are being filed. I'm going to defer on the appointment of an examiner until someone makes it clear to the Court by motion or otherwise what issues are to be examined in light of my prior ruling or rulings.

And, obviously, the Court will entertain any motions seeking derivative standing when filed. I would hope and expect that in those motions the parties or the movants will identify the causes of actions to be pursued and the basis for looking into those. So at this juncture, I appreciate the debtor's proposal made during the hearings on the motion to dismiss, but I'll defer until a later point in time.

All right. Mr. Gordon?

MR. GORDON: I had a couple of things I'd like to raise --

THE COURT: Yes.

MR. GORDON: -- if I could, Your Honor.

The first is -- I always hate raising issues like this but with respect to that scheduled phone call on the mediation process, I'm actually going to be in a Third Circuit argument at that time. Now I suppose it's not critical that I be available for that and, obviously, I'll be involved in meet and confers with the other side. But at this point -- and we don't know exactly when the argument will go. There's three that are all set to start at 9:00 in the morning, but -- you know, at some point during that morning. So I may not be available, so I did want the Court to know that.

THE COURT: Well, I can adjust the schedule. I just picked that time. And I don't want to start working over everybody's schedule. I could have it in the afternoon or I could have it the next day. Do you have a preference?

MR. GORDON: I think Wednesday would be better if we could do it Wednesday.

THE COURT: Does that conflict with anybody? This is where I get into trouble.

UNIDENTIFIED SPEAKER: I think that's Your Honor's Chapter 13 day.

THE COURT: It gives me plenty of time.

(Laughter)

MR. GORDON: That's perfect.

THE COURT: Becca, Alex, are we good on that date?

THE CLERK: It's the 16th?

THE COURT: Yeah.

THE CLERK: Yeah, I think we're good.

THE COURT: How about 11:30 at that point?

MR. GORDON: That would work, Your Honor. I appreciate it.

THE COURT: All right. 3/16.

MR. GORDON: Thank you.

And then the second thing and the substantive one is back to the FTCR issue that potential for a second FTCR, and you obviously know our position on that. But we were talking on the break that we didn't really flesh that process out at all. So I just had some questions to raise --

THE COURT: Sure.

MR. GORDON: -- and maybe get some guidance from the Court. The first thing that I would say make as a comment, I don't think the parties actually know which of the candidates have been struck because those communications were submitted ex parte to the Court. And so I think under the prior protocol, we assumed at some point Your Honor was going to tell us who were left, but I think we're going to need that in advance of that process.

THE COURT: I assume those correspondences have been docketed.

MR. GORDON: Not that I know of. I think they were ex parte.

MR. JONAS: (Indiscernible) ex parte, Your Honor. (Indiscernible) I conferred with the Court who advised us --

MR. GORDON: Right.

MR. JONAS: -- to set up an ex parte.

THE COURT: Well, I'll clear that up momentarily.

(Laughter)

MR. GORDON: And then the, you know, the related questions are basically how is this process going to work exactly. We're going to have another hearing. We didn't talk about whether there should be written submissions prior to that hearing and, if so, when and so that's one issue; and, also, if we're going to propose -- each of the constituents is going to propose another candidate, when that should be done and how it should be done. Would that be done ex parte, would it be done on the record, would it be a part of our written submissions?

So just some of the mechanics we realized that after we had the conversation earlier, we hadn't pinned any of those down.

THE COURT: All right. Thank you. Let's clarify it all.

(Pause)

THE COURT: So both TCC2 and TCC1 have struck, and I think that's the correct grammar, Joseph Greer and R. Scott

Williams. And the debtor has struck Marina Corodemus and Eric Green.

MR. GORDON: Okay.

THE COURT: So that places everybody on even keel as far as who's out there. You all know the remaining names.

MR. GORDON: Okay.

THE COURT: As far as the process, if we're having a hearing on 3/30, then I would ask for opposition papers to be filed seven days in advance to the appointment of an second FTCR and, as we've seen in this case, replies three days prior to the hearing.

I also would ask that in the event the Court were to agree upon the appointment -- well, actually, no. Why don't -- let's have the hearing on 3/30 and see which way I decide and then I could set a very short schedule on giving me -- providing me with names.

MR. GORDON: Okay.

THE COURT: You're welcome to talk about it in advance if you want to predict how the Court rules or gauge one way or the other, but apart from that, we'll wait until the hearing before I ask for names. All right?

MR. GORDON: Thank you, Your Honor. I appreciate that.

THE COURT: All right. Any other questions?

(No audible response)

THE COURT: We're done.

MR. GORDON: Thank you, Your Honor.

THE COURT: Take care, folks.

MR. GORDON: Thank you.

(Proceedings concluded at 1:36 p.m.)

* * * * *

C E R T I F I C A T I O N

We, KAREN WATSON, LORI KNOLLMEYER, and DIPTI PATEL, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen Watson

KAREN WATSON

/s/ Lori Knollmeyer

LORI KNOLLMEYER

/s/ Dipti Patel

DIPTI PATEL

J&J COURT TRANSCRIBERS, INC. DATE: March 9, 2022